

## REPUBLIC ACT NO. 12009

### AN ACT REVISING REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE "GOVERNMENT PROCUREMENT REFORM ACT", AND FOR OTHER PURPOSES

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

#### ARTICLE I

#### GENERAL PROVISIONS

**Section 1. *Short Title.*** – This Act shall be known as the "New Government Procurement Act."

**Sec. 2. *Declaration of Policy.***– It is the declared policy of the State to promote the ideals of good governance with a view towards transparency, competitiveness, efficiency, proportionality, accountability, public monitoring, procurement professionalization, sustainability, and value for money in government procurement.

**Sec. 3. *Governing Principles on Government Procurement.*** – Procurements by all branches and instrumentalities of the national government, its departments, bureaus, offices and agencies, including state universities and colleges (SUCs), government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), and local government units (LGUs), shall, in all cases, be governed by these principles:

(a) Transparency in the procurement process by providing access to all related information in accordance with open contracting practice that enables the disclosure of data and facilitates information sharing related to all stages of procurement;

(b) Competitiveness through ensuring equal opportunity for all eligible and qualified suppliers, manufacturers, distributors, contractors, consultants, and service providers;

(c) Efficiency by implementing an organized, uniform, and straightforward government procurement process through the use of emerging technologies and innovative solutions;

(d) Proportionality by ensuring that the conditions and parameters in the development of requirements, choice of procurement modality, and implementation of contracts shall be reasonably proportional to the needs of the Procuring Entity and the nature of the contract or project to be procured;

(e) Accountability where all public officials and personnel directly or indirectly involved in the procurement process and in the implementation of contracts are investigated and held accountable for their actions when necessary;

(f) Participatory procurement through public monitoring of the procurement process and the implementation of contracts to guarantee that every step is in accordance with the provisions of this Act and its implementing rules and regulations (IRR), and to ensure prudent and judicious use of government resources;

(g) Sustainability in the procurement process which covers the whole lifecycle of a property, ensures value for money and maximum benefits to society and the economy, and engenders minimal impact to the environment; and

(h) Professionalism in procurement through the development of qualification standards, a competency and certification framework, and a code of ethics that shall be observed by public procurement professionals.

**Sec. 4. *Scope and Application.*** – This Act shall apply to the Procurement of Goods, Infrastructure Projects, and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of the national government, its departments, bureaus, offices and agencies, including SUCs, GOCCs, GFIs, and LGUs. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

**Sec. 5. *Definition of Terms.*** – For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

(a) *Approved Budget for the Contract (ABC)* refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act or other authorized source of funds, in the case of National Government Agencies (NGAs); the corporate budget for the contract approved by the governing Boards, pursuant to Executive Order (E.O.) No. 518, series of 1979, in the case of GOCCs, GFIs, and Republic Act No. 8292, or the “Higher Education Modernization Act of 1997), in the case of SUCs; and the budget for the contract approved by the Sanggunian through an appropriations ordinance in the case of LGUs;

(b) *Beneficial Owner* refers to a natural person who: (1) ultimately owns or dominantly influences the management or policies of the juridical entity; or (2) exercises ultimate effective control over the juridical entity;

(c) *Bid* refers to a signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor, consultant, and service provider in response to the bidding documents;

(d) *Bidder* refers to a supplier, manufacturer, distributor, contractor, consultant, and service provider who submits a bid in response to the requirements of the bidding documents;

(e) *Bidding Documents* refer to documents issued by the Procuring Entity as the basis for Bids, furnishing all information necessary for a prospective bidder to prepare a Bid for the Goods, Infrastructure Projects, and Consulting Services to be provided;

(f) *Bids and Awards Committee (BAC)* refers to the Committee established in accordance with Article V of this Act;

(g) *Blacklisting* refers to an administrative penalty imposed by the Head of the Procuring Entity which prohibits a person or an entity including its affiliates from participating in all government procurement activities;

(h) *Common-Use Supplies and Equipment (CSE)* refer to goods, materials, and equipment that are used repetitively in the day-to-day operations of Procuring

Entities in the performance of their functions which are included in the electronic catalogue of the Philippine Government Electronic Procurement System (PhilGEPS);

(i) *Consulting Services* refer to services for Infrastructure Projects and other types of projects or activities of the government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (1) advisory and review services; (2) pre-investment or feasibility studies; (3) design; (4) construction supervision; (5) management and related services; and (6) other technical services or special studies;

(j) *End-User or Implementing Unit* refers to the employee or organic office within the organization of the Procuring Entity that identifies, plans, prepares, designs, and implements the procurement project based on the requirements or needs of the agency in accordance with its mandate;

(k) *Financial Eligibility* refers to having the financial capacity to manufacture, distribute, or deliver the Goods, Infrastructure Projects, and Consulting Services being procured;

(l) *Goods* refer to all items, supplies, materials, and general support services, except Consulting Services and Infrastructure Projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services;

(m) *GPPB* refers to the Government Procurement Policy Board established in accordance with Article XIX of this Act;

(n) *Head of the Procuring Entity (HoPE)* refers to: (1) the head of the agency or the duly authorized official, for NGAs; (2) the governing board or its duly authorized official, for GOCCs, SUCs, and GFIs; or (3) the local chief executive, for LGUs: *Provided*, That, in a department, bureau, office, or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the HoPE subject to the limitations and authority delegated by the head of the department, bureau, office or agency;

(o) *Infrastructure Projects* include the construction, improvement, rehabilitation, demolition, repair, restoration, or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government;

(p) *Jury Duty* refers to a responsibility in which the BAC, Technical Working Group (TWG), and Secretariat members, including end-users, give utmost priority to procurement assignments over all the other duties and responsibilities until the requirements for the procurement at hand are completed;

(q) *Legal Eligibility* refers to having the legal capacity to act as an entity as evidenced by permits, licenses, and/or registrations required by law to engage in the business of manufacturing, distributing, or delivering the Goods, Infrastructure Projects, and Consulting Services being procured;

(r) *Lifecycle Cost* refers to the total cost of ownership over the entire life span of an asset from its acquisition, operation, maintenance, and disposal;

(s) *Multi-Year Contractual Authority (MYCA)* refers to the authority given to the Procuring Entity to procure multi-year projects in accordance with the form and conditions set by the Department of Budget and Management (DBM);

(t) *Philippine Government Electronic Procurement System (PhilGEPS)* refers to the single electronic procurement portal managed by the Procurement Service (PS-DBM) as provided in Section 20 of this Act;

(u) *Philippine Products and Services* refer to local goods, articles, materials, supplies, services, and intangible products which may be:

(1) unmanufactured goods, articles, materials, or supplies wholly obtained or produced in the Philippines;

(2) any good, article, material, and supplies produced, manufactured, or assembled in the Philippines which has a minimum local content as may be determined by the Department of Trade and Industry (DTI);

(3) services, which refer to the delivery of value or intangible acts or uses through high-level skills, expertise, labor, or some form of knowledge, technology- or process-intensive activities; or

(4) intangible products, which refer to properties without physical existence including, but not limited to, computer software and products of the creative industry;

(v) *Portal* refers to a website that aggregates a wide variety of content for the purpose of attracting a large number of users;

(w) *Procurement* refers to the acquisition of Goods and Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real property. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 10752, entitled "The Right-of-Way Act", and other applicable laws, rules, and regulations;

(x) *Procuring Entity* refers to any branch, department, bureau, office, agency, or instrumentality of the government, including SUCs, GOCCs, GFIs, and LGUs procuring Goods, Infrastructure Projects, and Consulting Services;

(y) *Technical Eligibility* refers to having the experience or expertise to undertake the services, manufacturing, distribution, or delivery of the Goods, Infrastructure Projects, and Consulting Services being procured;

(z) *Value for Money* refers to the optimum combination of quality and cost to meet the requirements and objectives of the end-user.

**Sec. 6. *Standardization of Procurement Process and Forms.*** – To systematize the procurement process, avoid confusion, and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable.

For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all Procuring Entities. However, whenever necessary, to suit the particular needs of the Procuring Entity, modifications may be made particularly for major and specialized procurement, subject to the approval of the GPPB. In addition, the GPPB shall develop a decision-tree to be included in the IRR, that shall guide Procuring Entities on which mode of procurement is the most fit for their desired purpose.

## **ARTICLE II**

### **STRATEGIC PROCUREMENT PLANNING**

**Sec. 7. *Strategic Procurement Planning and Budgeting Linkage.*** – All procurement shall be undertaken with proper and sufficient planning and preparation to ensure sound procurement decisions. This includes the conduct of relevant market scoping, supply positioning, analysis of available procurement modalities, risk management, and disposal procedures as may be applicable.

Procuring Entities shall likewise adopt a procurement strategy that includes fit-for-purpose and proportional approaches, considers the whole lifecycle of a procurement project, including its environmental impact, and aims to achieve value for money.

During the planning stage, the Procuring Entity shall ensure that the project has minimal economic, social, and environmental risks or negative impact during its lifecycle, and that the goods and services are procured with due consideration for responsible and sustainable consumption and production practices, and the national policy.

Measures, such as, but not limited to, rehabilitation of properties, condemnation/destruction of properties, transfer of properties to other government agencies, barter, donation, return to supplier/vendor, trade-in, sale to government officials/employees of the agency, public auction, negotiated sale, sale of junk or scrap and/or recycling, and direct negotiation shall be considered by the Procuring Entity in the development of its requirements for purposes of disposal at the end of the useful life of the property.

For subcontracting arrangements, the following rules shall apply to locally-funded projects and to projects financed through Official Development Assistance, except those covered by treaty provisions:

- (a) The HoPE must provide prior approval to subcontracting;
- (b) Subcontractors must meet eligibility criteria;
- (c) The bidder or general contractor must disclose subcontractors during the bidding process;
- (d) The general contractor shall remain liable for the subcontractor's actions, defaults, delays, and negligence;

(e) The general contractor and the subcontractor shall share liability in cases where safety standards or other labor standards are violated; and

(f) The value of the entire completed and accepted project, including the subcontracted portion, shall be recorded as experience of the general contractor, in particular:

(1) The subcontractor shall get credit for one hundred percent (100%) of the value of the subcontracted portion of the project;

(2) Subcontractors shall be eligible to concessional windows of GFIs that treat receivables from the government as loan security; the receivables of subcontractors due from their general contractor shall similarly be accepted as loan security by GFIs;

(3) Contract performance monitoring, such as, but not limited to the Constructors Performance Evaluation System (CPES), shall also be mandatorily applied to the work of subcontractors.

To guarantee the usefulness throughout the whole lifecycle of goods to be procured, the Procuring Entity shall ensure that goods to be procured are brand new: *Provided*, That, the procurement of second-hand, refurbished or reconditioned goods, such as military, defense, or law enforcement equipment or materiel may be considered to secure a contract that is most advantageous to the government subject to the guidelines to be issued by the DBM and subject to compliance with relevant criteria, such as durability, remaining useful life, sustainability, maintenance cost, and warranty.

All procurement should be within the approved budget of the Procuring Entity. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan (APP), which shall at least include the following:

(a) Name of the project/procurement;

(b) Project management office (PMO)/end-user unit;

(c) General description of the project/procurement;

(d) Procurement methods to be adopted and indicating if the procurement tasks are to be outsourced;

(e) Criteria for bid evaluation;

(f) Time schedule;

(g) Source of funds; and

(h) Approved Budget for the Contract.

No government procurement shall be undertaken unless it is in accordance with the approved APP or Indicative APP of the Procuring Entity, as the case may be. The APP shall be approved by the HoPE and must be consistent with its duly approved yearly budget or proposed budget in the case of the Indicative APP. The APP shall be formulated and revised only in accordance with the guidelines set forth in the IRR.

**Sec. 8. Detailed Engineering for the Procurement of Infrastructure Projects.**– With the exception of an Infrastructure Project under a design-and-build scheme, no bidding and award of contract for Infrastructure Projects shall be made unless the detailed engineering investigations, surveys, and designs for the project which shall consider among others the impact on the environment have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the HoPE concerned or the duly authorized representative, and the acquisition of right-of-way pursuant to Republic Act No. 10752 has been accomplished.

Procuring Entities may consider architectural design that is well-curated and aesthetic to ensure that the Infrastructure Project not only meets functional requirements but also contributes to its overall appeal and architectural integrity.

**Sec. 9. Multi-Year Contracting.**– NGAs, including SUCs, implementing multi-year programs, activities, and projects shall request the DBM for the issuance of a MYCA prior to the commencement of any procurement activity for multi-year projects: *Provided, That,* for multi-year projects to be funded from internally generated income of SUCs, the SUCs shall secure the prior authority from its Board before starting any procurement activities covering the full contract cost.

In the case of GOCCs, GFIs, and SUCs, they shall secure prior authority from their respective governing Boards before commencing any procurement activities for multi-year projects covering the full contract cost. For LGUs, they shall secure any equivalent document issued by their respective Sanggunian authorizing them to enter into multi-year contracts.

The total project cost reflected in the MYCA or its equivalent document shall be the basis or reference for the ABC of the procurement contract.

**Sec. 10. Market Scoping.** – To ensure proper and strategic procurement planning, a Procuring Entity shall conduct market scoping as a preliminary undertaking in preparing its Project Procurement Management Plan (PPMP), which covers the proper cost estimation, project design and specifications, technical and selection criteria, delivery lead time, storage or warehousing requirements, related industry practices, and other relevant market information.

Market scoping may include the following activities: consultations with suppliers, contractors or consultants, professional associations or groups; participation in summits, fora or conferences; evaluation of market reviews; review of product or service brochures and marketing materials, industry journals and publications, and other related materials and publications; price sourcing for quotations or cost estimates from suppliers, contractors or consultants; use of relevant data from the PhilGEPS or agency websites to serve as a guide or reference; or any analogous activity for the purpose of gathering relevant market information.

**Sec. 11. Specifications.**– Specifications for the procurement of goods, as well as the goods component of Infrastructure Projects and Consulting Services, shall be based on any or a combination of the following: relevant characteristics; performance or functionality requirements; or product or service standards specified by appropriate government entities or similar international bodies.

Reference to a brand name shall not be allowed except for reasons of technical compatibility, interoperability, servicing, maintenance, or preservation of supplier warranty in order to keep the performance, functionality, and useful life of the

equipment, in which case, the Procuring Entity shall indicate the reasons or justifications for availing of the exception.

**Sec. 12. *Early Procurement Activities.*** – For Goods to be delivered, Infrastructure Projects to be implemented, and Consulting Services to be rendered in the following fiscal year, Procuring Entities are authorized to undertake early procurement activities pending the approval of the funding thereof.

The conduct of early procurement activities shall be made only upon approval of the Indicative APP by the HoPE. No award of contract shall be made until the approval and effectivity of the appropriate funding.

In case of projects requiring acquisition of right-of-way, no award of contract shall likewise be made until an authority or permit to enter is issued by the property owner; or a notarized deed of sale or deed of donation is executed in favor of the government; or a writ of possession is issued by a court of competent jurisdiction, as the case may be.

**Sec. 13. *Lifecycle Assessment and Lifecycle Cost Analysis.*** – To further support strategic procurement management and ensure smart and prudent use of government resources, Procuring Entities shall apply Lifecycle Assessment (LCA) and Lifecycle Cost Analysis (LCCA) in project planning, eligibility and selection criteria, or contract implementation: *Provided*, That the GPPB shall issue appropriate guidelines on the application of LCCA.

**Sec. 14. *Design-and-Build Scheme for Infrastructure Projects.*** – In preparing for a procurement project, Procuring Entities may consider employing the design-and-build scheme as a procurement approach whereby a single contractor is responsible for both design and construction of the government building, which allows quality assurance and effective cost and schedule management.

**Sec. 15. *Engagement of a Procurement Agent.*** – As part of strategic procurement planning, the HoPE may authorize the engagement of a government procurement agent, which shall undertake the functions of the BAC, if the Procuring Entity does not have the capability or proficiency to undertake a particular procurement: *Provided*, That, the Procuring Entity cannot delegate the issuance of the notice of award and the award of contract to the procurement agent and there shall be no transfer of funds to the procurement agent, except for the payment of service fee, if applicable.

The engagement of a procurement agent shall be further subject to the following conditions:

- (a) Made on a per procurement project basis;
- (b) Limited to procurement undertaken through competitive bidding: *Provided*, That in instances where the Procuring Entity lacks sufficient qualified personnel to constitute its own BAC, the Procuring Entity may engage a procurement agent to undertake other modes of procurement;
- (c) The procurement agent should be another government agency expert in the field which is the subject of procurement. This shall be expressly provided in the Memorandum of Agreement (MOA) with the Procuring Entity;



(d) Have at least one (1) representative from the Procuring Entity to be designated as a member of the TWG of the procurement agent to ensure that technical specifications or terms of reference of the Procuring Entity are properly reflected in the bidding documents;

(e) Have a representative from the Procuring Entity designated as a provisional member of the BAC of the procurement agent; and

(f) Covered by a MOA that is executed between the Procuring Entity and the procurement agent providing the details of the procurement project to be procured; the accountabilities and obligations of the two parties; the ABC; services fees, if applicable; and such other details as may be necessary. The MOA shall be in effect at least six (6) months before the end of the validity of the relevant appropriations as authorized in the relevant appropriations law, or in the corporate operating budgets or appropriations ordinances, in the case of GOCCs, GFIs, and LGUs respectively. In no case shall the undertakings of the MOA contravene this provision and its IRR to be issued by the GPPB.

Procuring Entities with existing MOAs with a procurement agent which have not yet been implemented upon the effectivity of this Act are encouraged to revisit the same and amend as may be necessary to conform with this provision.

**Sec. 16. Use of Framework Agreement.** – Procuring Entities may use a framework agreement as a procurement strategy to expand the pool of prospective bidders, take advantage of economies of scale, minimize the administrative burden of conducting separate procurement activities, and generate time and money savings.

The framework agreement shall be in the nature of an option contract between the Procuring Entity and the bidder that stipulates the terms and conditions that would be applied in subsequent contracts for the procurement of Goods, Infrastructure Projects, and Consulting Services with a single or multiple contractor, manufacturer, supplier, distributor, consultant, and service provider.

**Sec. 17. Pooled Procurement.** – Procuring Entities shall consider the advantages of a pooled procurement mechanism, as a procurement strategy, by collaborating or consolidating their requirements in a single, joint, bulk or group procurement in order to achieve greater value for money and procurement efficiency through demand aggregation, improve quality standards by combining technical capacity, and increase availability and secure sustainability of supplies.

**Sec. 18. Renewal of Regular and Recurring Services.** – The Procuring Entity may consider undertaking renewal of regular and recurring services to facilitate the immediate implementation of procurement projects. The duration for each renewal contract shall not exceed one (1) year.

**Sec. 19 Warehousing and Inventory System.**– For efficient planning for the storage and tracking of procured goods, Procuring Entities may adopt a general system of warehousing and cloud-based inventory of procured Goods, as may be necessary depending on the type, nature and volume of procurement undertaken by the Procuring Entity and subject to the availability of funds in accordance with applicable budgeting, accounting, and auditing rules and regulations.

The Procuring Entity, whenever applicable, shall develop guidelines for its warehousing functions ensuring auditable systems that promote integrity and efficiency,

and shall establish a compliance framework mandating training, audits, and transparent reporting.

The adoption of cloud-based inventory by NGAs, GOCCs, GFIs, SUCs, and LGUs shall be done in consultation with the Department of Information and Communications Technology (DICT) to ensure that the risks and vulnerabilities associated with data storage are adequately addressed through proper and effective security protocols.

### **ARTICLE III**

#### **PROCUREMENT BY ELECTRONIC MEANS**

**Sec. 20. *Procurement by Electronic Means.*** – To promote greater transparency, accountability, operational efficiency, and value for money, the PhilGEPS shall be the single electronic portal that shall serve as the primary source of information and channel in the conduct of all procurement activities of the government. The PhilGEPS shall maintain an integrated system that covers procurement planning until payment. The PhilGEPS shall develop features that make pertinent information accessible and transparent at all stages of procurement except procurements involving and affecting national security.

To take advantage of the significant built-in efficiencies of the PhilGEPS and the volume discounts inherent in bulk purchasing, through the centralized procurement undertaken by the PS-DBM, all Procuring Entities shall utilize the PhilGEPS for the procurement of CSEs in accordance with the rules and procedures to be established by the GPPB in consultation with the PS-DBM. The PhilGEPS shall include the following innovative features and solutions: electronic bulletin board; registry of suppliers, manufacturers, distributors, contractors, consultants, and service providers; electronic catalogue; virtual store; electronic marketplace; electronic reverse auction; electronic small value procurement; electronic payment; and electronic bidding. Electronic signatures used for this purpose must comply with the standards set in Republic Act No. 8792 or the “Electronic Commerce Act”.

All Procuring Entities shall register with the PhilGEPS and ensure their access to an online network to facilitate open, speedy, and efficient online transmission, conveyance, and use of electronic data messages or electronic documents.

Procuring Entities with established electronic procurement systems shall provide for the seamless interface of systems with the PhilGEPS to ensure efficient sharing of procurement information.

**Sec. 21. *Electronic Payment.*** – The electronic and uniform payment system to be used by the Procuring Entity and suppliers, manufacturers, distributors, contractors, consultants, and service providers shall be defined in the context of the Integrated Financial Management Information System to be developed by the DBM, Commission on Audit (COA), and Department of Finance (DOF).

**Sec. 22. *Security, Integrity and Confidentiality.*** – The PhilGEPS shall ensure the security, integrity, and confidentiality of documents submitted, stored, and managed through the system. It shall include features that provide for an audit trail of

electronic transactions and allow the COA to verify the security and integrity of the system at any time.

**Sec. 23. *Systems Interconnectivity between Government Agencies.***– Notwithstanding the provisions of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012”, the GPPB is hereby authorized to promulgate rules to ensure the interconnectivity of the following government databases:

(a) PhilGEPS in relation to the Government of the Philippines Official Merchants Registry (GOP-OMR);

(b) DTI on its database relating to business registration, list of all ongoing projects in public and private sector, and records of priority domestic goods and services;

(c) Construction Industry Authority of the Philippines (CIAP) on the CPES and the Philippine Contractors’ Assessment Board on the licensing of contractors;

(d) All LGUs on their issuance of permits and licenses;

(e) Bureau of Internal Revenue (BIR) on tax returns and clearance;

(f) Securities and Exchange Commission (SEC) and Cooperative Development Authority (CDA) on mandatory submissions of all registered enterprises and beneficial ownership information;

(g) Insurance Commission (IC) on the list of identified surety companies providing callable-on-demand surety contracts;

(h) Procuring Entities with established electronic procurement systems and websites on the status of projects, contracts, and performance of its respective winning bidders; and

(i) Other relevant government agencies, as may be determined by the GPPB:

*Provided, That, the GPPB shall coordinate with the DICT, PS-DBM, DTI, CIAP, LGUs, BIR, SEC, CDA, IC, and other relevant government agencies to ensure the implementation of this Section: Provided, further, That at all times, the sharing of information between and among government agencies and instrumentalities shall protect trade secrets and promote competition.*

**Sec. 24. *Procurement Data Analytics.*** – The GPPB, through its Technical Support Office (TSO), shall analyze the data obtained from the PhilGEPS and submitted procurement reports to ensure disclosure of information related to the procurement process. The GPPB shall publish an annual report on its website for the following purposes:

(a) Assist Procuring Entities in the strategic planning of their procurement projects;

(b) Assist oversight bodies in formulating and implementing data-driven effective procurement policies and rules pursuant to the State policy under Section 2 of this Act;

(c) Assist government agencies in identifying and detecting patterns that could help deter or mitigate fraud and non-competitive practices; and

(d) Facilitate public awareness, active participation, and monitoring of government procurement processes.

**Sec. 25. Maintenance, Update, and Backup.**— The PhilGEPs shall undertake periodic maintenance and upgrading of all its systems. It shall formulate a business continuity plan which shall include features such as, but not limited to, the establishment of backup sites, and regular backup of all information to maintain the integrity of the system and minimize risks of halts or interruptions in operations.

## ARTICLE IV

### MODES OF PROCUREMENT

**Sec. 26. Modes of Procurement.** – The Procuring Entity shall adopt any of the following modes of procurement consistent with the fit-for-purpose procurement approach:

(a) Competitive Bidding;

(b) Limited Source Bidding;

(c) Competitive Dialogue;

(d) Unsolicited Offer with Bid Matching;

(e) Direct Contracting;

(f) Direct Acquisition;

(g) Repeat Order;

(h) Small Value Procurement;

(i) Negotiated Procurement;

(j) Direct Sales; and

(k) Direct Procurement for Science, Technology and Innovation.

The specific terms and conditions for the application of each mode of procurement shall be specified in the IRR.

*Provided,* That the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern and emerging technologies: *Provided, further,* That such modifications are consistent with the provisions of Section 3 of this Act.

**Sec. 27. Competitive Bidding.** – A mode of procurement which is open to participation by any eligible bidder and which consists of the following processes:

- (a) Publication;
- (b) Pre-bid conference;
- (c) Eligibility screening of prospective bidders;
- (d) Receipt and opening of bids;
- (e) Evaluation of bids;
- (f) Post-qualification; and
- (g) Award of contract.

Notwithstanding the applicability of the other modes of procurement defined herein, the Procuring Entity may adopt competitive bidding in its procurement activity.

**Sec. 28. Limited Source Bidding.** – A mode of procurement that involves direct invitation to bid by the Procuring Entity to a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract.

Limited source bidding may only be resorted to in any of the following conditions:

- (a) Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources;
- (b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole; or
- (c) Procurement of highly specialized Infrastructure Projects involving and affecting national security.

**Sec. 29. Competitive Dialogue.** – A mode of procurement that employs a two-stage bidding process where the Procuring Entity invites suppliers, manufacturers, distributors, contractors, consultants, and service providers to a dialogue to propose solutions to address its needs and requirements.

Upon the submission of their initial technical proposals, without price tenders, eligible bidders shall be engaged in a dialogue to finalize the project requirements. Bidders shall then submit their technical and financial proposals which shall be subjected to the bid evaluation and post-qualification processes prescribed under this Act. Competitive dialogue may be resorted to if any of the following conditions are present:

- (a) The procurement includes innovative design or solutions involving procurement of complex purchases such as, but not limited to, sophisticated products, intellectual services, or major information and communications technology projects;

(b) The contract requires prior negotiations with the suppliers, manufacturers, distributors, contractors, consultants, and service providers because of specific circumstances related to the nature, complexity, legal and financial issues, or risks attached to the procurement; or

(c) The technical specifications cannot be sufficiently established or precisely defined by the Procuring Entity.

**Sec. 30. *Unsolicited Offer with Bid Matching.*** – A mode of procurement wherein the Procuring Entity may consider unsolicited offers on a negotiated basis for Goods and Consulting Services: *Provided*, That the following conditions are met:

(a) The procurement involves a new concept or technology as determined by the HoPE; and

(b) The Procuring Entity has invited comparative or competitive bids.

The contract shall be awarded to the original offeror if: (1) no comparative or competitive bid is received within the period prescribed in the IRR; (2) the bids submitted by the comparative offerors failed at bid opening; or (3) the original offeror matched or submits a lower price proposal against the comparative or competitive bid.

For purposes of this mode of procurement, and when the new concept or technology is acceptable, the Procuring Entity may secure funds from available sources, subject to government budgeting, accounting, and auditing rules.

**Sec. 31. *Direct Contracting.***– A mode of procurement wherein the supplier is required to submit a price quotation or a pro-forma invoice together with the conditions of sale, which may be accepted immediately or after some negotiations. Direct contracting may only be resorted to in any of the following conditions:

(a) When the goods are of proprietary nature, which can be obtained only from the proprietary source, or when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;

(b) When the procurement of critical components from a specific manufacturer, supplier, or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of the contract; or

(c) When it is sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

**Sec. 32. *Direct Acquisition.*** – A mode of procurement wherein, subject to compliance with the identified legal, technical and financial requirements, a Procuring Entity may procure directly from any known and reputable source, its required non-CSEs and CSEs not available in the PS-DBM and services with an ABC not exceeding Two hundred thousand pesos (P200,000.00). The threshold amount can be adjusted as may be deemed appropriate by the GPPB to reflect changes in economic conditions and for other justifiable reasons.

**Sec. 33. Repeat Order.** – A mode of procurement wherein, the Procuring Entity may procure goods from the previous winning bidder whenever there arises a need to replenish the goods procured under a contract previously awarded through bidding. Repeat order shall be subject to the post-qualification process prescribed in the bidding documents and all the following conditions:

(a) The unit price must be equal to or lower than that provided in the original contract;

(b) Except in special circumstances as may be defined in the IRR, the repeat order shall be availed of only within six (6) months from the date of the notice to proceed arising from the original contract; and

(c) The repeat order shall not exceed twenty five percent (25%) of the quantity of each item in the original contract.

**Sec. 34. Small Value Procurement.**– A mode of procurement whereby the Procuring Entity requests for the submission of at least three (3) price quotations for goods not available in the PS-DBM, Infrastructure Projects, and Consulting Services. The receipt of one (1) quotation is sufficient to proceed with the evaluation of bidders: *Provided*, That the amount involved does not exceed Two million pesos (P2,000,000.00) subject to the periodic review of the threshold amount and adjustments as may be deemed appropriate by the GPPB.

In the case of LGUs, the GPPB is authorized to adjust the threshold amount based on the LGU income classification.

**Sec. 35. Negotiated Procurement.** – Negotiated procurement shall be allowed only in the following instances:

(a) Two Failed Biddings. In case of two (2) failed biddings, as provided in Section 64 hereof;

(b) Emergency Cases. 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;

(c) Take-over of Contracts. Take-over of contracts which have been rescinded or terminated for causes provided for in the contract and existing laws, 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;

(d) Adjacent or Contiguous. Where the subject contract is adjacent or contiguous to an ongoing Infrastructure Project or Consulting Service: *Provided*, That, the original contract is the result of a competitive bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy

contracts, where the consultants have unique experience and expertise to deliver the required service;

(e) Agency-to-Agency. Procurement of Goods, Infrastructure Projects, and Consulting Services from another agency of the government which has the mandate and absorptive capacity to undertake the project, as certified by the servicing agency and validated by the Procuring Entity;

(f) Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services. Where Goods, Infrastructure Projects and Consulting Services can be contracted to a particular supplier, contractor or consultant and as determined by the HoPE, for any of the following:

(1) Work of art; commissioned work or services for creative design or a specific artist skill;

(2) Restorative works for the conservation of historical and culturally significant structures;

(3) Scientific, academic, scholarly work or research, or legal services;

(4) Highly-specialized life-saving medical and biotech equipment and devices, medicine, supplies, materials, tools and consumables, as certified by the Department of Health (DOH);

(5) Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or

(6) Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

(g) Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining: *Provided*, That, in both instances, trust and confidence are the primary consideration for the hiring of the consultant: *Provided, however*, That the term of the individual consultants shall, at the most, be on a yearly basis, renewable at the option of the appointing HoPE, but in no case shall exceed the term of the latter;

(h) Defense Cooperation Agreements and Inventory-Based Items. The Secretary of National Defense may directly negotiate with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations when the procurement involves major defense equipment or materiel and/or defense-related consultancy services subject to the following conditions:

(1) The Secretary of National Defense has deemed it necessary in order to protect the interest of the country;

(2) The expertise or capability required is not locally available; and

(3) The defense equipment or materiel and/or defense-related consultancy services to be procured under this modality is included in the Armed Forces of the Philippines Modernization Program previously approved by the President of the Philippines.



In the interest of national security, the Secretary of National Defense may also directly negotiate with a supplier or manufacturer in procuring inventory-based items, pertaining to major defense equipment or materiel, subject to the following conditions:

(1) Direct negotiation will address compatibility, interoperability, and sustainability;

(2) The supplier or manufacturer had fully and satisfactorily implemented a contract of the same item with the Department of National Defense (DND) or any of its bureaus or attached agencies, or law enforcement agencies;and

(3) The supplier or manufacturer shall provide a performance security in accordance with this Act.

Law enforcement agencies may utilize this mode when the aforementioned conditions are met. These agencies are the Philippine National Police (PNP), including the PNP Maritime Group (PNP-MG) and the PNP Aviation Security Group (PNP-AVSEGROUP), Philippine Drug Enforcement Agency (PDEA), Bureau of Immigration (BI), Office for Transportation Security (OTS), Bureau of Fire Protection (BFP), National Bureau of Investigation (NBI), Presidential Security Group (PSG), National Police Commission (NAPOLCOM), Bureau of Jail Management and Penology (BJMP), Bureau of Corrections (BuCor), and Philippine Coast Guard (PCG).

(i) Lease of Real Property and Venue. For lease of real property and venue for official use, it is preferred that government agencies lease publicly-owned real property or venue from other government agencies. If there is an available publicly-owned real property or venue that complies with the requirements of the Procuring Entity, it may enter into a contract of lease with the government-agency owner. In the event that the Procuring Entity would resort to privately-owned real property or venue, the end-user unit shall justify that the same is more efficient and economical to the government;

(j) NGO Participation. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to non-governmental organizations (NGOs), the Procuring Entity may enter into a MOA with an NGO;

(k) Community Participation. The Procuring Entity may directly purchase agricultural and fishery products from local farmers and fisherfolk and directly negotiate simple Infrastructure Projects with local communities or social groups or members thereof. For this purpose, community or social groups may be classified as organized or unorganized. Organized community or social group (OCSG) shall refer to a community or social group that has a defined organizational structure, identified membership and leadership, and adopts a principle of shared responsibility for their actions and shall be registered with the appropriate regulatory bodies. It shall include Microenterprises. Unorganized community or social group (UCSG) shall refer to a community or social group that is not registered in any government regulatory body or a member of a duly recognized private organization, which include, but are not limited to, community labor groups or "pakyaw" groups, social enterprises, associations of barangay health workers, farmers, fisherfolk, women, elderly, indigenous peoples, parent-teacher associations, solo parents, and persons with disabilities;

(l) United Nations (UN) Agencies, International Organizations or International Financing Institutions. Procurement from specialized agencies of the UN, international organizations or international financing institutions, of any of the following:

(1) Small quantities of off-the-shelf goods, exclusively used in education and health;

(2) Specialized products where the number of suppliers is limited, such as vaccines;

(3) Goods and Consulting Services involving advanced technologies, techniques and innovations not locally available as certified by the DTI, when it is most advantageous to the Procuring Entity; or

(4) Goods for critical public health priorities as determined by the DOH.

(m) Direct Retail Purchase of Petroleum Fuel, Oil and Lubricant (POL) Products, electronic charging devices, and Online Subscriptions. Direct retail purchase of POL products; electronic charging devices; and online subscriptions not available in the PS-DBM may be made by end-users delegated to procure the same from identified direct suppliers or service providers, where goods and services are required by a Procuring Entity for the efficient discharge of its principal functions or day-to-day operations. Online subscription includes (i) computer software and applications such as video conferencing applications, computer-aided design and drafting applications, office productivity tools, and system protection software; (ii) electronic publications, reference materials and journals; (iii) off-the-shelf software and applications, except internet and cloud computing services; and (iv) web-based services.

The GPPB may provide an amendment on the above enumeration or make an additional type of negotiated procurement subject to the following conditions:

(1) The Procuring Entity has requested the GPPB for the use of negotiated procurement of Goods, Infrastructure Projects or Consulting Services with utmost necessity and justification;

(2) The GPPB shall have findings that any of the existing modes of procurement will be impossible or defeats the purpose of the procurement;

(3) The Goods, Infrastructure Projects or Consulting Services are better identified by the Procuring Entity on its distinctiveness and uniqueness to a procurement program, activity or project; and

(4) Other circumstances that may be identified by the GPPB which justifies the addition of a new type of negotiated procurement that will address the concerns of one or more government agencies.

**Sec. 36. Direct Sales.** – A mode of procurement of non-CSEs where a Procuring Entity directly purchases from a supplier that has satisfactorily delivered non-CSEs to another government agency under a completed contract. Direct sales may only be resorted to when all of the following conditions are met:

(a) The procurement contract by the original government agency that procured the non-CSEs was awarded through bidding;

(b) The government agency that originally procured the non-CSEs has inspected and accepted the same, and has issued a certification that the supplier has satisfactorily performed its obligations under the contract;

(c) The procurement for the same non-CSEs by the Procuring Entity shall only be initiated once within six (6) months from the acceptance of the non-CSEs by the original government agency;

(d) The contract to be executed between the Procuring Entity and the supplier must be within the amount of the contract executed with the original government agency, and that the supplier must offer the non-CSEs to the Procuring Entity at the same or lower unit price offered to the original government agency; and

(e) The supplier agreed to the terms offered by the Procuring Entity and remains legally, technically, and financially capable to undertake the contract with the Procuring Entity.

For purposes of this provision, the original government agency shall provide a copy of the relevant procurement documents and papers with the Procuring Entity for procurement, budgeting, accounting, and auditing purposes.

**Sec. 37. Direct Procurement for Science, Technology and Innovation.** – A mode of procurement where the Procuring Entity may procure the following goods and services directly from a legally, technically and financially capable manufacturer or supplier, or from a qualified startup business:

(a) Supplies, materials, equipment, and related services to be used actually, exclusively, and directly in the conduct of research and development projects or activities;

(b) Goods which include products of a commissioned task by a Procuring Entity which was processed, developed, and manufactured in satisfaction of its needs and requirements. These include: (i) pre-commercial goods and services that involve early market engagement to stimulate the development of new goods and services that meet specific government needs; and (ii) goods to be manufactured by qualified startup businesses alongside the thrust to develop and support new and startup businesses.

Unless otherwise indicated in a written agreement, the intellectual property rights and ownership over the commissioned goods developed and manufactured pursuant to this provision shall belong to the Procuring Entity, and no manufacturing or sale thereof can be performed by the supplier; and

(c) Other analogous goods to the foregoing.

The GPPB, in coordination with the National Innovation Council (NIC), shall develop procurement policies encompassing the entire research, innovation, and enterprise ecosystem. To foster innovation, relevant government agencies shall expedite the release of goods used in and documents necessary for science, technology, and innovation.

**Sec. 38. Video Recording of All Procurement-Related Conferences for Competitive Bidding.** – To enhance the transparency of the procurement process, the Procuring Entity shall keep a video recording of all procurement-related conferences for Competitive Bidding, which includes pre-procurement conference, pre-bid conference, bid opening, and other meetings of the BAC. All procurement-related conferences for Competitive Bidding shall not commence without a video recording initiated by the BAC. The Procuring Entity shall also livestream the preliminary

examination of the bids and the opening of the bids to the public on its website, social media account, or any other forms of livestreaming services.

The mandatory video recording shall only apply for the procurement of Goods costing above Ten million pesos (P10,000,000.00), Infrastructure Projects costing above Twenty million pesos (P20,000,000.00), and Consulting Services costing above Five million pesos (P5,000,000.00) using competitive bidding as the mode of procurement.

The Procuring Entity shall ensure that copies of the video recording shall be stored for not less than five (5) years and shall be made available to the public upon request and payment of a fee.

When national security is involved, the HoPE shall decide whether or not to video record all procurement related conferences taking into consideration the nature, classification, sensitivity, and confidentiality thereof.

The GPPB is authorized to adjust the threshold amounts and the storage period as may be deemed appropriate.

**Sec. 39. Prohibition on Splitting of Government Contracts.** – In using any of the modes of procurement under Article IV of this Act, the Procuring Entity shall ensure that this does not result in splitting of government contracts, which involves dividing or breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of this Act and its IRR: *Provided, That*, procurement per unit, by lot or package, is allowed subject to the available budget, required quantity, product availability, delivery sites, geographical location and market capacity.

**Sec. 40. Procurement of CSE.**– All NGAs, GOCCs, GFIs, SUCs, and LGUs shall only procure their CSE from PS-DBM, subject to its availability. In cases of unavailability of stock or for purposes of efficiency, practicality, and/or economic viability, Procuring Entities may procure their CSEs from other sources, subject to guidelines to be issued by the GPPB.

Due to the efficiency and economy of bulk purchasing, the PS-DBM may deal directly with manufacturers or exclusive distributors subject to legal, technical and financial requirements ensuring that products are obtained from reliable sources, of the best quality, and at the most advantageous price for the whole of government. Access to goods and equipment in economic lot sizes may likewise be achieved by PS-DBM through consignment or any appropriate contractual arrangement.

For purposes of this Section, consignment shall refer to an arrangement whereby the consignor gives actual or constructive possession of goods, equipment and services to the consignee without transfer of ownership and disbursement of government funds between consignee and consignor, and such goods, equipment and services are to be sold by the consignee for and on account of the consignor at terms advantageous to the government. The consignee shall remit the proceeds of the sale to the consignor, net of service fees, if applicable. The PhilGEPS electronic marketplace may be used as a consignment platform for goods and equipment.

PS-DBM, which is tasked with the centralized procurement of CSE for the government in accordance with Letter of Instructions (LOI) No. 755, E.O. No. 359, series of 1989, and Administrative Order No. 17, series of 2011, shall develop the parameters in the identification, expansion, and the definition of requirements and

specifications of CSEs through the conduct of market scoping, market survey and market availability.

## **ARTICLE V**

### **BIDS AND AWARDS COMMITTEE**

**Sec.41. *The BAC and its Composition.*** – Each Procuring Entity shall establish one or several BACs as warranted by the volume and complexity of the procurement projects and to ensure the efficient and effective conduct of its procurement, as determined by the HoPE.

Each BAC shall have five (5) or seven (7) members, at the discretion of the HoPE. It shall be chaired by at least a third ranking permanent official of the Procuring Entity or in the absence thereof, a permanent official of the next lower rank other than the duly authorized representative of the HoPE. The members of the BAC shall be designated by the HoPE. However, in no case shall the HoPE or the approving authority be a member of the BAC and the Chief Accountant cannot be a regular member of the BAC.

Unless sooner removed for a cause, the members of the BAC shall have a fixed term of one (1) year reckoned from the date of designation, renewable at the discretion of the HoPE: *Provided*, That no member of the BAC shall serve for more than three (3) consecutive terms, except when allowed by the HoPE. In case of resignation, retirement, separation, transfer, re-assignment, removal, or death the replacement shall serve only for the unexpired term: *Provided, Further*, That, in case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension. For justifiable causes to be expressed in writing, a member shall be suspended or removed by the HoPE. For transfer of knowledge and experience, membership in the BAC shall allow for staggered designations, to be identified in the IRR.

**Sec.42. *Functions of the BAC.*** – The BAC shall have the following functions:

(a) Recommend to the HoPE the use of any of the modes of procurement as provided in Article IV of this Act;

(b) Publish and/or post the invitation to bid;

(c) Conduct pre-procurement and pre-bid conferences;

(d) Determine the eligibility of prospective bidders;

(e) Receive bids;

(f) Conduct the evaluation of bids;

(g) Undertake post-qualification proceedings;

(h) Recommend award of contracts to the HoPE or the duly authorized representative: *Provided*, That, in the event the HoPE shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing, copy furnished the BAC;

- (i) Recommend the imposition of sanctions in accordance with Article XXI;
- (j) Prepare a procurement monitoring report that shall be approved and submitted by the HoPE to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR; and
- (k) Perform such other related functions as may be necessary, including the creation of a TWG from a pool of technical, financial, and/or legal experts to assist in the procurement process. The HoPE shall be informed of the creation of a TWG.

**Sec.43. Observers.**– To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the COA, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a civil society organization (CSO) or people’s organization (PO), as the case may be: *Provided*, That, they do not have any direct or indirect interest in the contract to be bid out. The private group or CSO or PO shall be duly registered with the SEC or the CDA, as the case may be, and the observers therefrom shall meet the following qualifications:

- (a) Knowledge, experience or expertise in procurement or in the subject matter of the contract bid;
- (b) Absence of actual or potential conflict of interest in the contract to be bid out; and
- (c) Any other relevant criteria that may be determined by the GPPB under the IRR.

*Provided, further*, That the head of the sector, discipline or organization duly certifies that the observer is a member in good standing. Each observer shall make a separate report on the conduct of the public bidding, its procedures, conditions and problems, if any, which shall be submitted to the HoPE, PhilGEPS and COA. The GPPB shall prescribe the form of the report.

The GPPB shall maintain a registry or roster of qualified observers for the benefit of the Procuring Entities and shall have the authority to determine additional qualifications of the observers.

**SEC. 44. Procurement Unit.** – There shall be a procurement unit, division, or office in each Procuring Entity which shall serve as Secretariat to the BAC and perform other functions related to procurement as may be delegated by the HoPE. The creation of the procurement unit, division, or office shall be subject to the standards and guidelines prescribed by the DBM.

**Sec.45. Honoraria.** – The Procuring Entity may grant payment of honoraria to all members of the BAC regardless of position, TWG, and ad hoc Secretariat, in an amount not to exceed thirty percent (30%) of their respective basic monthly salaries, subject to availability of funds, which may be sourced from fees collected by the BAC in relation to its procurement activities. The DBM shall promulgate the necessary guidelines for this purpose and may determine other sources of funds to implement the grant of honoraria.

**Sec. 46. Professionalization of Government Procurement Practitioners.** – In order to build a cadre of public procurement professionals, the DBM shall create procurement positions in the government based on the qualification standards recommended by the GPPB and approved by the Civil Service Commission (CSC). The

GPPB shall ensure the professionalization of procurement practitioners and for this purpose, it shall develop the following:

- (a) A competency framework to identify the skills, knowledge, and attribute of each of the procurement positions;
- (b) A certification framework to upscale procurement competencies and ensure continued professional development;
- (c) A code of ethics for public procurement professionals; and
- (d) An inclusive capacity development program in order to enhance accountability of all procurement practitioners, both from the public and private sectors, promote supplier diversity, promote competition and optimize efficiency, and value for money.

Moreover, the Professional Regulation Commission (PRC), in consultation with the GPPB, shall establish, administer, and regulate a professional licensing program and the continuing education of public procurement professionals as a requirement for the holding of a procurement position in government.

## **ARTICLE VI**

### **PREPARATION OF BIDDING DOCUMENTS**

**Sec.47. Form and Content of Bidding Documents.**– The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the following:

- (a) Approved Budget for the Contract;
- (b) Invitation to bid/request for expression of interest;
- (c) Instructions to Bidders, including criteria for eligibility, bid evaluation and post-qualification, the weight assigned to each criterion and the quality-price ratio if awarded to the most economically advantageous responsive bid (MEARB), as well as the date, time and place of the pre-bid conference (where applicable), submission of bids and opening of bids;
- (d) Terms of Reference;
- (e) Scope of work, where applicable;
- (f) Eligibility Requirements;
- (g) Plans and Technical Specifications;
- (h) Form of Bid, Price Form, and List of Goods or Bill of Quantities;

- (i) Delivery Time or Completion Schedule;
- (j) Form and Amount of Bid Security;
- (k) Form and Amount of Performance Security and Warranty;
- (l) Form of Contract, and General and Special Conditions of Contract; and

(m) Additional documentary requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

Based on specific needs, the end-user unit or implementing unit of the Procuring Entity shall be responsible for the preparation of all documents necessary for the procurement activity including, but shall not be limited to, the technical specifications, scope of work, or terms of reference.

**Sec. 48. Access to Information.** – In all stages of the preparation of the Bidding Documents, the Procuring Entity shall ensure equal access to information. Prior to their official release, no aspect of the Bidding Documents shall be divulged or released to any prospective bidder or person having direct or indirect interest in the project to be procured, or to any party, except those officially authorized in the handling of the documents.

In procurements involving and affecting national security, the disclosure of the specific components of the procurement documents, such as, the technical specifications, requirements, and components, shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the relevant documents vis-a-vis the purpose and reason for the request.

## **ARTICLE VII**

### **INVITATION TO BID**

**Sec.49. Pre-Procurement Conference.** – Prior to the issuance of the invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the pre-procurement conference is optional.

In procurements involving and affecting national security, the pre-procurement conference shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the Goods, Infrastructure Projects, and Consulting Services being procured.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to the law. This shall be attended by the BAC, the end-user unit or implementing unit, or officials who prepared the bidding documents and the draft invitation to Bid. Consultants, if any, may likewise attend the pre-procurement conference, as necessary.

For the procurement of Goods and Infrastructure Projects, the BAC, based on the recommendation of the end-user unit, shall finally determine whether the contract will be awarded to the Lowest Calculated Responsive Bid (LCRB) or the MEARB. The GPPB



is authorized to adopt other award criterion, such as, but not limited to, the Most Advantageous Responsive Bid (MARB), in the procurement of Goods and Infrastructure Projects consistent with the fit-for-purpose procurement approach. The specific terms and conditions of such award criterion shall be specified in the guidelines to be issued by the GPPB.

The MEARB, as an award criterion, may be used where the consideration of assigning weights for the technical and financial aspects of the project is more appropriate to recognize both the qualitative and economic values of the bid.

The period for the conduct of pre-procurement conference shall be provided in the IRR.

**Sec. 50. *Publication and Contents of the Invitation to Bid.*** – In line with the principle of transparency and competitiveness and to ensure the widest possible dissemination thereof, all invitations to Bid shall be published continuously by the Procuring Entity, for seven (7) calendar days in the PhilGEPS, in any conspicuous place in the premises of the Procuring Entity, and in the website or social media platforms of the Procuring Entity, if available or such other channels as may be authorized by the GPPB. For justifiable reasons, Procuring Entities that cannot publish procurement opportunities in its website, social media platform, or such other channels authorized by the GPPB shall publish its invitation to bid, at least once, in a newspaper of general nationwide circulation.

In procurements involving and affecting national security, publication shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the Goods, Infrastructure Projects, and Consulting Services being procured.

The details and mechanics of implementation shall be provided in the IRR.

The Invitation to Bid shall contain, among others:

- (a) A brief description of the subject matter of the Procurement;
- (b) A general statement on the criteria to be used by the Procuring Entity for the eligibility check, the examination and evaluation of Bids, and post-qualification: *Provided*, That, in the case of procurement of Consulting Services, the invitation to bid shall also contain the criteria for the shortlisting of prospective bidders;
- (c) For the procurement of Goods and Infrastructure Projects, whether the contract will be awarded to the LCRB or the MEARB;
- (d) If the contract is to be awarded to the MEARB, the criterion to be used in assessing the bid, the weight or score assigned by the Procuring Entity to each criteria, and the quality-price ratio to determine the award;
- (e) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;
- (f) The ABC to be bid;
- (g) The source of funds;

(h) The period of availability of the Bidding Documents, and the place where these may be secured;

(i) The contract duration; and

(j) Such other necessary information deemed relevant by the Procuring Entity.

**Sec.51. *Pre-bid Conference.*** – At least one (1) pre-bid conference shall be conducted for each procurement, unless otherwise provided in the IRR. Subject to the approval of the BAC, a pre-bid conference may also be conducted upon the written request of any prospective bidder.

The pre-bid conference(s) shall be held at least twelve (12) calendar days before the deadline for receipt of bids to allow prospective bidders to adequately prepare their bids, which shall be specified in the IRR.

For purposes of transparency, efficiency, and competitiveness, Procuring Entities may guide prospective bidders in the understanding and accomplishment of the necessary documents to support their participation in the procurement process: *Provided*, That, in procurements involving and affecting national security, pre-bid conference shall be dependent upon the HoPE, having due regard to the nature, classification, sensitivity, and confidentiality of the Goods, Infrastructure Projects, and Consulting Services being procured.

## **ARTICLE VIII**

### **RECEIPT AND OPENING OF BIDS**

**Sec.52. *Eligibility Requirements for the Procurement of Goods, Infrastructure Projects, and Consulting Services.*** – The BAC or, under special circumstances specified in the IRR, its duly designated organic office shall require the submission of the prospective bidder's valid and updated PhilGEPS Certificate of Registration and Membership to ensure that the bidder is technically, legally, and financially capable to undertake the proposed project for the procurement of Goods, Infrastructure Projects, and Consulting Services within the period set forth in the Invitation to Bid.

A prospective bidder may be allowed to submit its eligibility requirements electronically. However, said bidder shall later on certify under oath as to the correctness of the statements made and the completeness and authenticity of the documents submitted.

For procurement of Goods and Infrastructure Projects, joint ventures may participate: *Provided*, That the primary purpose of each member of the joint venture must be similar or related to the requirement of the project to be bid out; *Provided, further*, That each member of the joint venture shall be jointly and severally liable to the Procuring Entity in cases of breach or failure to comply with the requirements of the project.

The documents submitted to support the issuance of the PhilGEPS Certificate of Registration and Membership shall be subject to validation by the BAC during post-qualification.

The bidder shall ensure that its Certificate of Registration and Membership are current and updated. The failure to update its Certificate with the current and updated supporting documents shall result in the automatic suspension of the bidder's certificate.

**Sec. 53. Short-Listing for Consulting Services.** – The eligible prospective bidders for the procurement of Consulting Services shall be evaluated using numerical ratings on the basis of the short-listing requirements prescribed for the Competitive Bidding concerned, within the period stated in the Invitation to Bid to determine the short-list of bidder that shall be allowed to submit their respective bids.

**Sec. 54. Submission and Receipt of Bids.**– A bid shall have two (2) components, namely the technical and financial components which should be in separate sealed envelopes, and which shall be submitted simultaneously. The bids shall be received by the BAC on such date, time, and place specified in the Invitation to Bid. The deadline for the receipt of bids shall be fixed by the BAC, providing sufficient time to complete the bidding process and giving the prospective bidders sufficient time to study and prepare their bids. The deadline shall also consider the urgency of the procurement involved.

Bids submitted after the deadline shall not be accepted.

Notwithstanding the provisions of this Section and Section 55 of this Act, the GPPB shall adopt technological advances to enhance the procurement process, and leverage emerging technologies and innovative procedures for the submission, receipt, and opening of bids through the PhilGEPS.

**Sec. 55. Modification and Withdrawal of Bids.** – Bidders may modify their bids: *Provided*, That, this is done before the deadline for the receipt of bids. The modification shall be submitted in a sealed envelope duly identified as a modification of the original bid and stamped received by the BAC.

Bidders may, through a letter, withdraw their bids or express their intention not to participate in the bidding before the deadline for the receipt of bids. In such cases, they shall no longer be allowed to submit another bid for the same contract either directly or indirectly.

**Sec. 56. Bid Security.** – All Bids under modes of procurement to be determined in the IRR shall be accompanied by a Bid security, which shall serve as a guarantee that, after receipt of the Notice of Award, the winning bidder shall enter into contract with the Procuring Entity within the stipulated time and furnish the required performance security. The specific amounts and allowable forms of the Bid security shall be prescribed in the IRR: *Provided*, That, sectors enumerated under Section 76 of this Act may be allowed to post such other forms such as bid securing declaration.

**Sec. 57. Bid Validity.** – Bids and Bid securities shall be valid for such a reasonable period of time indicated in the Bidding Documents. The duration for each undertaking shall take into account the time involved in the process of Bid evaluation and award of contract.

**Sec. 58. Bid Opening.** – The BAC shall publicly open all bids at the time, date, and place specified in the bidding documents: *Provided*, That, it shall be held not later than one (1) calendar day after the deadline for the submission and receipt of Bids. The minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee.

## ARTICLE IX

### BID EVALUATION

**Sec. 59. Preliminary Examination of Bids.** – Prior to Bid evaluation, the BAC shall examine first the technical components of the bids using “pass/fail” criteria to determine whether all required documents are present. Only bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial component.

**Sec. 60. Ceiling for Bid Prices.** – The ABC shall be the upper limit or ceiling for the Bid prices. Bid prices that exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award.

**Sec.61. Bid Evaluation for the Procurement of Goods and Infrastructure Projects.** – For the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids.

For contracts to be awarded to the LCRB, the bids that passed the preliminary examination shall be ranked from lowest to highest in terms of their corresponding calculated prices. The bid with the lowest calculated price shall be referred to as the Lowest Calculated Bid (LCB).

For contracts to be awarded to the MEARB, the BAC shall evaluate the bid using a predetermined quality-price ratio. The quality component shall be assessed on the basis of criteria that may include qualitative, environmental, and/or social aspects linked to the subject matter of the contract. These may comprise the following:

- (a) Quality and technical merit, including technical competence and a credible track record;
- (b) Aesthetic and functional design and characteristics;
- (c) Approach and methodology;
- (d) Accessibility;
- (e) Tools and equipment;
- (f) Social, environmental, economic, and innovative characteristics;
- (g) Organization, qualification, and experience of employees or staff assigned to perform the contract;
- (h) On-going contracts and work commitments;
- (i) After-sales service and technical assistance;
- (j) Delivery conditions, such as delivery period and delivery process;
- (k) Disposal measures; or

(l) Other relevant criteria in relation to the subject Goods or Infrastructure Projects to be procured.

The BAC shall specify in the invitation to bid the quality-price ratio and the criteria for assessing the quality component. The bidder with the best overall score using the quality-price ratio shall be referred to as the Most Economically Advantageous Bid (MEAB). The quality and price proposals shall be given corresponding weights. The price proposal shall be given a minimum weight of fifteen percent (15%) up to a maximum of forty percent (40%).

The entire evaluation process for the procurement of Goods and Infrastructure Projects shall be completed within seven (7) calendar days from the deadline for receipt of proposals.

**Sec.62. Bid Evaluation of Short Listed Bidders for Consulting Services.** – For the procurement of Consulting Services under a quality-based evaluation procedure, the Bids of the short-listed bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria stated in the bidding documents, which shall include factors such as, but not limited to, experience, performance, quality of personnel, price and methodology. The Bids shall be ranked from highest to lowest in terms of their corresponding calculated ratings. The Bid with the highest calculated rating shall be the Highest Rated Bid (HRB). The BAC shall invite the bidder concerned for negotiation and/or clarification on the following items: financial proposal submitted by the bidder, terms of reference, scope of services, methodology and work program, personnel to be assigned to the job, services/facilities/data to be provided by the Procuring Entity concerned, and provisions of the contract. When negotiations with the first-in-rank bidder fails, the financial proposal of the second rank bidder shall be opened for negotiations: *Provided*, That the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the ABC. Whenever necessary, the same process shall be repeated until the bid is awarded to the winning bidder.

## **ARTICLE X**

### **POST-QUALIFICATION**

**Sec.63. Objective and Process of Post-qualification.** – Post-qualification is the stage where the bidder with the LCB, or the MEAB, in the case of Goods and Infrastructure Projects, or the HRB, in the case of Consulting Services, undergoes verification and validation whether it has passed all the requirements and conditions as specified in the bidding documents.

If the bidder with the LCB or HRB passes all the criteria for post-qualification, its Bid shall be considered the LCRB, in the case of Goods and Infrastructure Projects or the Highest Rated Responsive Bid (HRRB), in the case of Consulting Services.

If the bidder with the MEAB passes the verification and validation by the BAC and TWG of each bid component, to which any weight or score is given during evaluation, as well as all the criteria for post-qualification, its bid shall be considered the MEARB. The quality and price components, the corresponding numerical weights, and the procedures for the determination of the MEARB shall be provided in the IRR.

However, if a bidder fails to meet any of the requirements or conditions, it shall be post-disqualified and the BAC shall conduct the post-qualification on the bidder with the second LCB or HRB, or the MEAB with the second highest score. The same procedure shall be repeated until the LCRB, HRRB, or the MEARB, as the case may be, is finally determined.

In all cases, the contract shall be awarded only to the bidder with the LCRB, HRRB, or MEARB, as the case may be.

The post-qualification process shall be completed in not more than twelve (12) calendar days from the determination of the LCB/HRB/MEAB. In exceptional cases, the post-qualification period may be extended by the HoPE.

**Sec.64. Failure of Bidding.** – There shall be a failure of bidding in competitive bidding, limited source bidding, or competitive dialogue if:

- (a) No bids are received;
- (b) All bidders are declared ineligible;
- (c) No bid qualifies as the LCRB, HRRB, or MEARB; or
- (d) Whenever the bidder with the LCRB, HRRB, or MEARB, as the case may be, refuses, without justifiable cause, to accept the award of contract.

Under any of the above instances, the contract shall be re-published or reposted and re-bid. The BAC shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the BAC may resort to negotiated procurement as provided for in Section 35 of this Act.

**Sec.65. Single Calculated/Rated/Economically Advantageous and Responsive Bid Submission.** – A Single Calculated/Rated/Economically Advantageous Responsive Bid shall be considered for award if it falls under any of the following circumstances:

(a) If after publication, only one prospective bidder applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements;

(b) If after the publication, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or

(c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the Procuring Entity shall ensure that the ABC reflects the most advantageous prevailing price for the government.

## **ARTICLE XI**

### **AWARD, IMPLEMENTATION, AND TERMINATION OF THE CONTRACT**

**Sec.66. Notice and Execution of Award.**– Within a period not exceeding ten (10) calendar days from the determination and declaration by the BAC of the LCRB,

HRRB, or MEARB, as the case may be, and the recommendation of the award, the HoPE or the duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the HoPE or the duly authorized representative shall immediately issue the Notice of Award to the bidder with the LCRB, HRRB, or MEARB.

The winning bidder shall formally enter into contract with the Procuring Entity within ten (10) calendar days from the receipt of the notice of award. When further approval of higher authority is required, the approving authority for the contract shall be given a maximum period of fifteen (15) calendar days from receipt of the contract to approve or disapprove it.

In the case of GOCCs, the concerned board shall take action on the said recommendation within twenty (20) calendar days from receipt thereof. The prescribed periods for execution and/or approval of contracts may be extended for reasons beyond the control of the Procuring Entity or the approving authority, or for other justifiable causes.

In the event that the approving authority shall disapprove the contract, such disapproval shall be based only on valid, reasonable, and justifiable grounds to be expressed in writing. A copy of the decision to disapprove the contract shall likewise be furnished to the BAC.

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than three (3) calendar days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor.

**Sec. 67. *Period of Action on Procurement Activities.*** – The period from the opening of bids up to the award of contract shall not exceed sixty (60) calendar days.

The GPPB is authorized to adjust the period as may be deemed appropriate: *Provided, Further,* that such adjustment shall not exceed ninety (90) calendar days.

All members of the BAC shall be on a jury duty type of assignment until the Notice of Award is issued by the HoPE in order to complete the entire procurement process at the earliest possible time.

**Sec. 68. *Performance Security.*** – Prior to the signing of the contract, the winning bidder shall, as a measure of guarantee for the faithful performance of and compliance with its obligations under the contract prepared in accordance with the bidding documents, be required to post a performance security in such form and amount as may be specified by the GPPB: *Provided, That,* sectors enumerated under Section 76 of this Act may be allowed to post other forms such as performance securing declaration.

The IC shall identify the surety companies that may be tapped to issue surety and/or performance bonds. The list of surety companies identified by the IC shall include only those whose surety business is ready to provide callable-on-demand surety contracts, where the Procuring Entity can claim outright on the surety contract and receive the proceeds thereof upon default of the bidder. The performance security posted by the winning bidder must remain effective until final acceptance by the Procuring Entity.

**Sec. 69. *Failure to Enter into Contract and Post Performance Security.*** – If for justifiable causes, the bidder with the LCRB, HRRB, or MEARB, as the case may

be, fails, refuses, or is otherwise unable to enter into contract with the Procuring Entity, or if the bidder fails to post the required performance security within the period stipulated in the bidding documents, the BAC shall disqualify the said bidder and shall undertake post-qualification for the next-ranked LCB, HRB, or MEAB. This procedure shall be repeated until an award is made. However, if no award is possible, the contract shall be subjected to a new bidding.

In the case of failure to post the required performance security, the bid security shall be forfeited without prejudice to the imposition of sanctions prescribed under Article XXI.

**Sec. 70. Reservation Clause.** – The HoPE reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

(a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

(b) If the BAC is found to have failed in following the prescribed bidding procedures; or

(c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government in the following instances: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

**Sec. 71. Contract Implementation and Termination.** – The rules and guidelines for the implementation and termination of contracts awarded pursuant to the provisions of this Act shall be prescribed in the IRR.

## ARTICLE XII

### SUSTAINABLE PUBLIC PROCUREMENT

**Sec. 72. Sustainable Public Procurement.** – All Procuring Entities shall establish a sustainable public procurement program to achieve value for money on a whole life basis not only to meet their specific organizational needs but for the benefit of the society and the economy, while reducing adverse environmental impact.

**Sec. 73. Green Public Procurement Strategy.** – Green Public Procurement is an approach whereby Procuring Entities seek to procure Goods, Infrastructure Projects, and Consulting Services with reduced environmental impact through their lifecycle.

As part of strategic procurement planning and in support of the Philippines' commitment to accelerate climate action and strengthen disaster resilience, Procuring Entities shall integrate and implement green practices, as well as environmentally relevant criteria or requirements, in the design and specifications of their procurement projects.



To further promote Green Public Procurement, sustainability of products, materials or structures with green specifications shall be given greater weight in the evaluation of bids.

The GPPB shall ensure the incorporation and implementation of the concepts of sustainability and green public procurement in the activities of the government. The Green Public Procurement Strategy shall be implemented in phases, taking into account the readiness of both the government agencies as well as green product suppliers.

**Sec. 74. *Development of a Green Local Market.*** – The DTI, in consultation with relevant government agencies and the private sector, shall develop a cost-efficient validation and certification program for green products to attract green investments and improve the competition in government procurement.

**Sec. 75. *Inclusive Procurement Program.*** – To provide equal opportunities to the vulnerable and marginalized sectors, as well as microenterprises, social enterprises, and startups, Procuring Entities shall encourage active participation of the registered sectors in all procurement activities, giving weight to inclusivity in programs involving gender and ethnic equity, poverty reduction and respect to fundamental labor standards. This program shall likewise be considered by the Procuring Entity when an appropriation law earmarks an amount for projects specifically contracted out to any of these sectors.

The GPPB shall develop procurement policies that engender an enabling environment for meaningful competition across all bidders and incorporate social considerations and gender parity in the procurement of Goods, Infrastructure Projects, and Consulting Services. It shall also issue the policy guidelines on how Procuring Entities can implement gender responsive approaches in public procurement in relation to project planning, eligibility and selection criteria, contract performance, and grounds for exclusion/suspension/blacklisting.

**Sec. 76. *Registration of Certain Sectors.*** – The GPPB shall maintain a registry of entities belonging to the following sectors:

- (a) Farmers as certified by the Department of Agriculture (DA);
- (b) Fisherfolk as certified by the Bureau of Fisheries and Aquatic Resources (BFAR);
- (c) Persons with disabilities as certified by the National Council for Disability Affairs (NCDA) pursuant to Republic Act No. 7277, otherwise known as the Magna Carta for Disabled Persons, as amended;
- (d) Solo parents as certified by the Department of Social Welfare and Development (DSWD);
- (e) Microenterprises and Social Enterprises as certified by the Micro, Small and Medium Enterprises Development Council (MSMED Council);
- (f) Startups, spin-offs and other form of entity involved in science, technology, and innovation activities as certified by the DTI, DICT, National Innovation Council (NIC) or the Department of Science and Technology (DOST), as may be applicable;

(g) Cooperatives duly registered with the CDA pursuant to Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines, as amended; and

(h) Other relevant sectors as may be determined by the GPPB to ensure inclusivity and diversity in the procurement process.

**Sec. 77. Exemptions and Other Forms of Support.** – The GPPB, after due consultation with the DA, BFAR, NCD, DSWD, MSMED Council, DTI, DICT, NIC, DOST, Commission on Higher Education, and CDA shall prescribe instances for outright exemption and other forms of support for the sectors mentioned in the preceding section as may be provided for in the IRR.

### **ARTICLE XIII**

#### **DOMESTIC AND FOREIGN PROCUREMENT**

**Sec. 78. Procurement of Domestic and Foreign Goods.** – Consistent with the country's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers and distributors.

**Sec. 79. Domestic Preference.** – Subject to the provisions of Republic Act No. 11981 or the "TatakPinoy (Proudly Filipino) Act", the Procuring Entity shall give priority and preference to Philippine products and services: *Provided, That,* the preference and priority for Philippine products shall be guaranteed upon all levels of the procurement process, including raw materials, ingredients, supplies or fixtures.

The Procuring Entity shall award to the domestic bidder if the bid is not more than twenty-five percent (25%) in excess of the lowest foreign bid. The margin of preference provided herein shall be subject to a periodic review and adjustment by the GPPB, as may be necessary.

The priority and preference established herein may be waived should any of the following conditions be present:

- (a) when domestic production is insufficient or unavailable in the required commercial quantities;
- (b) when the specific or desired quality is not met;
- (c) when the priority and preference will result in inconsistencies with the Philippines' obligations under international agreements; and
- (d) other analogous circumstances.

### **ARTICLE XIV**

#### **LEASE OF MOVABLE PROPERTIES**

**Sec. 80. Lease Contracts.** – The lease of movable properties shall also be subject to government procurement using the most applicable mode of procurement. Movable properties refer to those properties defined under Articles 416, 417, and 418 of the New Civil Code of the Philippines.

### **ARTICLE XV**

## **DISCLOSURE OF RELATIONS**

**Sec. 81. *Disclosure of Relations.*** – In addition to the proposed contents of the Invitation to Bid as mentioned under Section 50 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she, any partner, member of the board, or officer of the juridical entity is not related to the HoPE; the members of the BAC, the TWG, and the BAC Secretariat, the head of the Project Management Office or the end-user unit or implementing unit, and the project consultants of the Procuring Entity, or of the procurement agent, whichever is applicable, by consanguinity or affinity up to the third civil degree. In order to determine the ultimate beneficiary and prevent collusion, the ultimate beneficial ownership of an entity shall be disclosed by the bidder. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 59 of this Act. For this reason, relation to the aforementioned persons within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the Procuring Entity notwithstanding the act of such persons inhibiting themselves from the procurement process.

**Sec. 82. *Declaration of Beneficial Ownership.*** – Notwithstanding the provisions of Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, legal entities like corporations, partnerships, private sector organizations, foundations, and associations that participate in procurement projects shall safeguard the government from all acts that undermine a transparent, fair and competitive procurement process. The beneficial ownership information of the suppliers, manufacturers, distributors, contractors or consultants shall be a requirement to participate in government procurement. The GPPB shall maintain an online registry of beneficial ownership information of bidders established for government procurement which shall be accessible to the public.

## **ARTICLE XVI**

### **PROTEST MECHANISM**

**Sec. 83. *Protests on Decisions of the BAC.*** – Decisions of the BAC in all stages of procurement may be protested to the HoPE. For this purpose, the GPPB shall establish an electronic filing system for bidders to submit their protests after paying a non-refundable protest fee via electronic payment channels within the system. The amount of the protest fee, which shall be a reasonable amount in proportion to the ABC but not to exceed Five million pesos (P5,000,000.00), and the periods during which the protests may be filed and resolved shall be specified in the IRR: *Provided, however,* That a prior request for reconsideration should have been filed by the party concerned to the BAC and the same has been resolved.

The HoPE shall resolve the filed protest and issue a decision through the system.

**Sec.84. *Resolution of Protests.*** – The protests shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the HoPE shall be final.

**Sec. 85. *Resort to Regular Courts.*** – Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have jurisdiction over final decisions of the HoPE. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure, as amended.

In cases where the amounts are in excess of the specified thresholds in the IRR, the decisions of the HoPE shall become final and executory ten (10) calendar days after receipt of a copy thereof by the parties, unless, within the same period, an appeal to the Regional Trial Court has been perfected.

Nothing in this Act shall be interpreted to prejudice or prohibit the Office of the Ombudsman from exercising its duties, functions, and powers as provided under the 1987 Constitution, Republic Act No. 6770, otherwise known as the "Ombudsman Act of 1989", and/or any relevant rules and regulations pursuant thereto.

**Sec. 86. *Non-interruption of the Bidding Process.*** – In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

**Sec. 87. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions.***– No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials, or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the procurement, bidding or awarding of contracts for Goods, Infrastructure Projects, and Consulting Services of the government; commencement, execution, implementation, operation of any such contract; termination or rescission of any such contract; and the undertaking or authorization of any other lawful activity necessary for such contract.

This prohibition shall apply in all cases, disputes or controversies instituted by a party, including but not limited to, cases filed by bidders or those claiming to have rights through such bidders involving such contract. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

## **ARTICLE XVII**

### **SETTLEMENT OF DISPUTES**

**Sec.88. *Dispute Resolution.*** – Any and all disputes arising from the implementation of a contract covered by this Act may be submitted to arbitration or other forms of alternative dispute resolution in the Philippines according to the provisions of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004: *Provided, That,* construction disputes that are within the competence and jurisdiction of the Construction Industry Arbitration Commission to resolve shall be referred thereto.

To ensure efficiency in the procurement process, parties to the dispute are encouraged to select the most expeditious mode of dispute resolution.

## **ARTICLE XVIII**

### **CONTRACT PRICES AND WARRANTIES**

**Sec. 89. *Contract Prices.*** – For the given scope of work in the contract as awarded, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation. In the event of an extraordinary increase in prices of specific components of the Infrastructure Project, price escalation may be considered, subject to prior approval of the GPPB. If the cost of construction components increases by more than ten percent (10%) of the unit price of work items, as determined against the prevailing price indices of the Philippine Statistics Authority (PSA), a price escalation may be authorized at a no loss, no-gain basis, using the appropriate formula prescribed by the GPPB. For the purpose of this section, the PSA shall ensure that its price indices are region specific and updated on a monthly basis.

**Sec. 90. *Warranty.*** – (a) For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer, or distributor, as the case may be, for a specific time after performance of the contract, a warranty shall be required from the contract awardee for such period of time as may be provided in the IRR, the obligation for which shall be covered by either retention money in the amount equivalent to a percentage of every progress payment, or a special bank guarantee equivalent to a percentage of the total contract price, to be provided in the IRR. The said amounts shall only be released after the lapse of the warranty period: *Provided, That,* the goods supplied are free from defects and all the conditions imposed under the contract have been fully met.

(b) For the procurement of Infrastructure Projects, the contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period as defined in the IRR taking into consideration the scale and coverage of the project from its final acceptance by the government and shall be held responsible for any damage or construction of works except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of its personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by its construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, Government Service Insurance System bond, or callable surety bond.

The contractor shall undertake the repair works, at its own expense, of any defect or damage to the Infrastructure Projects on account of the use of materials of inferior quality, defects in the construction, or due to any violation of the terms of the contracts within ninety (90) calendar days from the time the HoPE has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

## **ARTICLE XIX**

### **THE GOVERNMENT PROCUREMENT POLICY BOARD**

**Sec.91. *Organization and Functions.***– The Government Procurement Policy Board (GPPB) shall be the central body that sets strategic directions and makes policy decisions regarding all matters affecting public procurement, having due regard to the

country's regional and international obligations, and is tasked to lead the nation's efforts in advancing public procurement reforms in accordance with this Act. The Board shall:

(a) Formulate and amend, whenever necessary, the IRR of this Act, associated issuances and government procurement manuals, Philippine bidding documents and standard forms for procurement, and issue policy papers to ensure that the procurement process is streamlined and responsive to the needs of the government. In line with its digitalization efforts, the GPPB shall establish an online automated process to provide timely responses to inquiries related to the implementation of this Act;

(b) Establish and implement the professionalization program provided in this Act; and

(c) Establish and implement a strategic procurement monitoring program that uses data analytics to enhance procurement planning and evidence-based policymaking as provided under Section 24 of this Act.

The GPPB shall be composed of the: Secretary of the DBM as Chairperson, and the Secretary of the National Economic and Development Authority (NEDA) as Alternate Chairperson, with the following as members: the Secretaries of the Departments of Public Works and Highways, National Defense, Education, Interior and Local Government, Transportation, or their duly authorized representatives; a representative from the PS-DBM; and a representative from the private sector, to be appointed by the President of the Republic of the Philippines upon the recommendation of the GPPB. The GPPB may invite a representative from the COA to serve as a resource person.

In the performance of its functions, the GPPB shall be supported by a Technical Support Office (TSO), an agency attached to the DBM. The TSO shall be headed by a Director General with a rank equivalent to an Undersecretary and supported by Deputy Directors General with a rank equivalent to an Assistant Secretary, to be appointed by the President, as endorsed by the Secretary of the DBM, all of whom should be of good moral character, honesty, probity, and unquestionable integrity. The Secretary of the DBM shall appoint the officials and employees of the TSO for ranks lower than the Deputy Directors General. The existing officials and employees shall be retained in the GPPB-TSO, without loss of seniority rights and same entitlements and privileges.

In addition to the powers granted under this Act, the GPPB shall absorb all the powers, functions and responsibilities of the Procurement Policy Board created under E.O. No. 359, series of 1989. All affected functions of the Infrastructure Committee of the NEDA Board are hereby transferred to the GPPB.

The GPPB may establish an Inter-agency Technical Working Group/s (IATWG/s) to provide subject matter expertise to the GPPB in the formulation and review of policies, rules, and regulations related to government procurement. The IATWG/s, in particular, shall endorse policy recommendations for the GPPB'S consideration and approval. The IATWG/s shall consist of representatives from the economic services, social services, agriculture, health, education, construction, energy, environment, information and communications technology, research and development, and other sectoral groups as determined by the GPPB, to guarantee that the procurement policies are inclusive and promote good governance.

## **ARTICLE XX**

### **ADMINISTRATIVE SANCTIONS**

**Sec. 92. Administrative Liability of Public Officers.**– Without prejudice to the criminal and civil liabilities under Republic Act No. 3019, otherwise known as the “Anti-graft and Corrupt Practices Act” and other penal laws, any public officer found to have committed any of the following acts shall be administratively liable with all the accessory penalties for government employees even if no criminal prosecution is instituted against him:

(a) Opening any sealed bid including but not limited to bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents to any prospective bidder, person, or any party having direct or indirect interest in the project to be procured, prior to the appointed time for the public opening of bids or other documents;

(b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the IRR;

(c) Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular bidder, or allowing oneself to be unduly influenced or pressured;

(d) Splitting of contracts which exceed procedural purchase limits and competitive bidding;

(e) Abusing the exercise of the power of the hope or his or her duly authorized representative to reject any and all bids with manifest preference to any bidder;

(f) Simulating procurement eligibility requirements or strategic procurement planning activities;

(g) All other acts or omissions with the intention of not complying with the mandatory provisions of this Act.

**Sec. 93. Jurisdiction.**–Jurisdiction over the offenses defined under this Article shall belong to the appropriate courts, according to laws existing at the time of the commission of the offenses.

Notwithstanding Article 22 of the Revised Penal Code or any law to the contrary, the administrative, civil, and/or criminal liability of any person, corporation, or any other entity for any unlawful act committed prior to the effectivity of this Act shall not be diminished, modified, nor affected in any way by its enactment.

**Sec. 94. Preventive Suspension.** – The head of agency may preventively suspend any member of the TWG or the Secretariat, or the BAC, and other officials and employees involved if there are strong reasons or *prima facie* evidence showing that the officials or employees concerned are found liable of the charges filed against them under Article XX of this Act or for dishonesty as defined by the Civil Service Laws. In all cases, procedural and substantive due process as mandated by the Constitution and Civil Service Laws, rules and regulations, shall be strictly observed.

**Sec. 95. Lifting of Suspension and Removal of Administrative Disabilities.** – Lifting of preventive suspension pending administrative investigation, as

well as removal of administrative penalties and disabilities shall be in accordance with the provisions of Sections 52 and 53, Chapter 7 (Civil Service Commission), Book V of E.O. No. 292 otherwise known as the Administrative Code of 1987.

**Sec. 96. *Civil Liability in Case of Conviction.*** – Without prejudice to administrative sanctions that may be imposed in proper cases, a conviction under Republic Act No. 3019 and other penal laws shall carry with it civil liability, which may either consist of restitution for the damage done or the 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.

**Sec. 97. *Liquidated Damages.*** – All contracts executed in accordance with this Act shall contain a provision on liquidated damages which shall be payable in case of breach thereof. The amount thereof shall be specified in the IRR.

## **ARTICLE XXI**

### **SUSPENSION AND BLACKLISTING**

**SEC. 98. *Administrative Liability of Private Entities.***– Without prejudice to criminal and civil liabilities under applicable laws, including their accessory penalties, if any, administrative liability attaches to private entities, such as suppliers, contractors or consultants, that are subjected to any of the following penalties:

(a) Any appropriate corrective measure, depending on the severity of the offense considering its disadvantages to the GOP, shall be imposed in accordance with the guidelines of the GPPB;

(b) Suspension shall be imposed for offenses committed under Section 99 of this Act. The entity is prohibited from participating in any procurement of the Procuring Entity concerned for a given period; or

(c) Blacklisting shall be imposed in case offenses occur under Sections 100 and 101. The entity shall be disqualified from participating in all government procurements for a given period or perpetually, as the case may be.

**SEC. 99. *Imposition of Suspension.***– The HoPE, subject to the authority delegated to the BAC, if any, shall impose the penalty of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense, for any of the following offenses:

(a) Refusing or failing to post the required performance security within the prescribed time;

(b) Withdrawing a bid, or refusing to accept an award, or refusing or failing to enter into contract with the Procuring Entity without justifiable cause, after the approval of the HoPE for having been the declared LCRB, MEARB, or HRRB as the case may be;

(c) Refusing to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;

(d) Causing the delay, without justifiable cause, of the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts;



(e) For the renewal of contracts for regular and recurring services, refusal of the service provider to accept the notice of renewal or failure to submit its updated documentary requirements for the renewal of contract without any justifiable reason;

(f) Delivering of goods of unsatisfactory or inferior quality as may be provided in the contract;

(g) Rendering poor performance by the consultant of one's service. Poor performance shall be as follows:

(1) Defective design resulting in substantial corrective works in design and/or construction;

(2) Failure to deliver critical outputs due to fault or negligence of the consultant;

(3) Specifying materials which are inappropriate, substandard, or way above acceptable standards; and

(4) Allowing defective workmanship or works by the winning bidder being supervised by the consultant; or

(h) Rendering poor performance by the winning bidder or unsatisfactory quality and/or progress of work. Poor performance shall be as follows:

(1) Negative slippage of fifteen percent (15%) and above within the critical path of the project due entirely to the fault or negligence of the winning bidder; and

(2) Quality of materials and workmanship not complying with the approved specifications arising from the fault or negligence of the winning bidder.

Moreover, the bid security or the performance security posted by the entity concerned shall also be forfeited.

**SEC. 100. *Imposition of Blacklisting.*** – The HoPE may impose the penalty of blacklisting of one (1) year prohibition for the first offense, or two (2) years prohibition for the second offense for any of the following offenses:

(a) Committing three (3) or more of any of the acts imposed with suspension, as provided under Section 99 of this Act;

(b) Using force, fraudulent machinations, coercion, undue influence or pressure on any member of the BAC or any officer or employee of the Procuring Entity to take a particular action for its own favor or gain, or to the disadvantage of a particular bidder;

(c) Agreeing with two or more bidders and submitting different bids as if they were bonafide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid;

(d) Using the name of another for purposes of participating in any procurement activity;

(e) Submitting eligibility requirements and bids containing false information or falsified documents or the concealment of such information will materially alter the outcome of eligibility screening or any stage of the procurement;

(f) Maliciously submitting different bids through two or more persons, corporations, partnerships or any other business entity in which it has interest to create the appearance of competition that does not in fact exist so as to be declared as the winning bidder;

(g) Submission of beneficial ownership information containing false entries;

(h) Unauthorized accessing of the contents of any bid submitted to the Procuring Entity before the opening of bids;

(i) Entering into an agreement with other bidder/s which call upon one to refrain from bidding for procurement contracts, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure an undue advantage to any of the bidders;

(j) Failing to faithfully disclose its relationship, regardless of the time of its discovery, with the HoPE, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit or implementing unit, and the project consultants of the Procuring Entity, or of the procurement agent, whichever is applicable, by consanguinity or affinity up to the third civil degree pursuant to Section 81 of this Act;

(k) Terminating the contract due to the default or unlawful acts of the bidder supplier, contractor or consultant;

(l) Engaging in any documented unsolicited attempt to unduly influence the outcome of the bidding;

(m) Employing schemes which stifle or suppress any procurement activity;

(n) Assigning or subcontracting of the contract or any part thereof or substitution of key personnel named in the proposal without prior written approval by the Procuring Entity;

(o) Willful or deliberate abandonment or non-performance of the project or contract by the winning bidder resulting in substantial breach thereof without lawful and/or just cause; or

(p) In case it is determined *prima facie* that the winning bidder has engaged, before or during implementation of the contract, in the following unlawful deeds and behaviors relative to contract acquisition and implementation:

(1) Corrupt, fraudulent, collusive and coercive practices;

(2) Drawing up or using forged documents; or

(3) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade.

Moreover, the bid security or the performance security posted by the entity concerned shall be forfeited.

**SEC. 101. Imposition of Blacklisting with Perpetual Disqualification. –**

The HoPE shall impose blacklisting with perpetual disqualification based on any of the following grounds:

(a) Committing a third offense imposed with blacklisting under this Act by the same Procuring Entity, or a combination of three (3) violations imposed with blacklisting by the Procuring Entity and other Procuring Entities, as posted on the GPPB portal; or

(b) Failing to comply with the provision on warranty that requires to repair any noted defect or damage to the Infrastructure Project due to the use of materials of inferior quality within ninety (90) calendar days from the issuance of the order by the HoPE to undertake such repairs.

Moreover, the bid security or the performance security posted by the entity concerned shall be forfeited.

**SEC. 102. Suspension Pending Blacklisting Proceedings.**—During the pendency of the blacklisting proceedings, the bidder shall be automatically suspended from participating in the current procurement activity being undertaken by the Procuring Entity concerned.

The suspension order shall be immediately lifted in case the HoPE dismisses the case.

**Sec. 103. Status of Suspended or Blacklisted Person.** – Before the issuance of a blacklisting order, the erring bidder may participate in the procurement of any government project except in the Procuring Entities where it is suspended: *Provided*, That, if the blacklisting order is issued prior to the date of the Notice of Award, the blacklisted person shall not be qualified for award and such contract shall be awarded to another bidder.

It is the responsibility of the Procuring Entity to upload to the portal of the GPPB the corrective measure, suspension order or blacklisting order, as the case may be, within seven (7) calendar days after its respective issuance.

The issuance of a suspension or blacklisting order shall not prejudice any contract awarded prior thereto: *Provided*, That, the offenses which brought about the suspension or blacklisting are not connected to the awarded contract.

**Sec. 104. Initiation of Action.** – The BAC or the HoPE may, *motu proprio*, commence the administrative proceedings for corrective measures, suspension or blacklisting, at any stage of the procurement or contract implementation, upon *prima facie* determination that a bidder or prospective bidder has committed any of the grounds provided for in Sections 99, 100, and 101 of this Act. Any bidder/prospective bidder may also initiate the suspension and blacklisting proceedings.

At the option of the Procuring Entities, a reasonable fee may be required for initiating the suspension and blacklisting proceedings.

**Sec. 105. Extent of Administrative Sanctions.** – The penalties of suspension and blacklisting shall be applied against (a) any entity to which the suspended or blacklisted person has a controlling interest; and (b) any beneficial owner of the suspended or blacklisted person.

## ARTICLE XXII

### LEGAL ASSISTANCE AND INDEMNIFICATION PACKAGE FOR BAC MEMBERS AND SUPPORT STAFF

**Sec. 106. *Private Legal Assistance.*** – All members of the BAC, TWG, and Secretariat, are hereby authorized to engage the services of private lawyers or external counsel immediately upon receipt of notice that an administrative, civil or criminal action, suit or proceeding is filed against them in connection with the performance of their functions and duties. The lawyer's fee shall be part of the indemnification package for the members of the BAC, TWG, and Secretariat, subject to the provisions of Section 107 hereof.

**Sec. 107. *Indemnification Package.*** – The GPPB shall establish an equitable indemnification package for public officials providing services in the BAC, TWG, and Secretariat, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any administrative, civil or criminal action, suit or proceeding to which they may be, or have been made, a party by reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or gravem misconduct or grave abuse of discretion.

In the event of a settlement or compromise, indemnification shall be confined only on matters covered by the settlement: *Provided*, That the public officials to be indemnified have not committed gross negligence or grave misconduct in the performance of their functions and duties.

The members of the BAC, TWG, and Secretariat shall also be entitled to medical assistance for injuries incurred in the performance of their functions.

## ARTICLE XXIII

### FINAL PROVISIONS

**Sec. 108. *Appropriations.*** – The amount necessary for the initial implementation of this Act shall be charged against the current year's available appropriations. Thereafter, such sums as may be necessary for the implementation of this Act shall be included in the annual General Appropriations Act.

**Sec. 109. *Whole-of-Government Approach.*** – In order to effectively achieve the objectives of this Act and to scale up professionalization of government procurement practitioners, the GPPB shall provide sustained training, capacity-building, and support to stakeholders in the government procurement process, such as education, training, seminars, and workshops, in areas such as modes of procurement, streamlined processes, supply chain management and logistics including warehousing, and digitalization.

The HoPE, members of the BAC, and TWG shall undergo an executive course on procurement while the bac secretariat shall undergo annual training programs.

Pursuant thereto, all branches and instrumentalities of the government, its departments, bureaus, offices and agencies, including SUCs, GOCCS, GFIs, and LGUs shall allocate a portion of their capacity development funds to send their BAC members,

BAC Secretariats, and TWGs to training. The capacity-building program shall include the development of skills of government agencies in understanding and implementing the government's Green Public Procurement Strategy through the following:

- (a) Conduct of relevant training needs assessment of the public sector;
- (b) Provision of technical assistance to suppliers, particularly the microenterprises and social enterprises; and
- (c) Conduct of public awareness campaigns on green procurement, among others.

The GPPB shall establish partnerships with SUCs or other educational institutions in providing training programs. It shall establish standards for accreditation of said institutions.

The Procuring Entity, through the HoPE, shall submit periodic progress reports to the GPPB on the status of its capacity development. Reportorial requirements prescribed under this Act shall take into consideration reports required under other laws related to procurement, with the view to harmonizing and achieving efficiencies in the preparation of these reports.

**Sec. 110. Oversight Committee.** – There is hereby created a Joint Congressional Oversight Committee to oversee the implementation of this Act for a period not exceeding five (5) years from the effectivity of this Act. The Committee shall be composed of the Chairperson of the Senate Committee on Finance, Chairperson of the Senate Committee on Constitutional Amendments and Revision of Laws, and two (2) members thereof appointed by the Senate President, and the Chairperson of the House Committee on Appropriations, the Chairperson of the House Committee on Revision of Laws and two (2) members thereof to be appointed by the Speaker of the House of Representatives. The minority groups in the Senate and the House of Representatives shall each have one seat in the Joint Congressional Oversight Committee. It shall submit its report and recommendation to the Senate President and the Speaker of the House of Representatives within five (5) years from its organization.

**Sec. 111. Mandatory Review.** – The Congress shall conduct a mandatory review of this Act at least once every five (5) years, and as often as it may deem necessary.

**Sec. 112. Implementing Rules and Regulations and Standard Forms.** – Within one hundred eighty (180) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB. For a period not later than ninety (90) days upon the approval of the IRR, the standard forms for procurement shall be formulated and approved.

**Sec. 113. Transitory Provision.** – Prior to the effectivity of the IRR of this Act, the provisions of Republic Act No. 9184 and its IRR shall remain in force and effect in order to ensure the continued implementation of programs, activities, and projects.

The GPPB and all HoPE, Procuring Entities and the BACs<sub>7</sub> affected by this Act shall be given a three-year (3) transitory period from the approval of the standard forms for procurement, to fully comply with the requirements of this Act.

**Sec. 114. Reportorial Requirements.**– The GPPB shall, upon approval of the IRR and the standard procurement forms, effect the publication of the same, in

accordance with existing laws, rules, and regulations. Upon approval, the same shall also be posted on the website of the GPPB.

Thereafter, the GPPB, through its TSO, shall send written notices when the said documents have been posted on its website to the Office of the President, the Senate of the Philippines, and the House of Representatives.

**Sec. 115. *Repealing Clause.***— Republic Act No. 9184 otherwise known as the Government Procurement Reform Act and Commonwealth Act No. 138 are hereby repealed. All other laws, acts, presidential decrees, executive orders, presidential proclamations, issuances, rules and regulations, or parts thereof which are contrary to or inconsistent with any of the provisions of this Act are hereby repealed, amended, or modified accordingly.

**Sec. 116. *Separability Clause.*** — If any portion or provision of this Act is subsequently declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall remain in full force and effect.

**Sec. 117. *Effectivity.*** — This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

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