



DEC 28 2012

DEPARTMENT ORDER)
No. **96**)
Series of 2012)

at 12.13

Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
OFFICE OF THE SECRETARY
Manila

697.13 DPWH
01.02.2013

SUBJECT : **CLARIFICATION ON THE SIGNATORIES OF THE NOTICES OF AWARD, APPROVAL OF CONTRACTS, AND NOTICES TO PROCEED FOR LOCALLY-FUNDED AND FOREIGN-ASSISTED CONSULTANCY SERVICES PROCURED IN THE CENTRAL OFFICE**

Per Department Order No. 24 (DO 24), series of 2007, regarding the Omnibus Levels of Authorities of DPWH Key Officials, the approval or signing of the **Notices of Award (NOAs)** and **Notices to Losing Bidders for Consultancy Services** (Locally-Funded and Foreign-Assisted) procured in the Central Office is delegated to the Chairman of the Bids and Awards Committee (BAC).

However, Section 37.1.3 of Rule XI of the Revised Implementing Rules and Regulations (IRR) of RA 9184 requires the Head of the Procuring Entity to issue the Notice of Award to the bidder with the Highest Rated Responsive Bid. On the other hand, Section 34.5 of Rule X of the Revised IRR of RA 9184 mandates the Bids and Award Committee to notify the bidders in writing of their post-disqualifications and the grounds for them.


In accordance with the said Section 37.1.3 of Rule XI and Section 34.5 of Rule X of the Revised IRR of RA 9184, **NOAs for all Consultancy Services procured in the Central Office shall be signed by the Secretary**, while **Notices to Losing Bidders shall be signed by the Chairman of the BAC for Consultancy Services**.

In addition, consistent with the provisions of the same Revised IRR of RA 9184 and DO 24, the corresponding **Contracts for the Consultancy Services shall be approved by the Secretary**, while the **Notices to Proceed (NTPs) shall be signed by the Head Implementing Offices concerned**.

Moreover, pursuant to the requirement of Section 37.4.2 of Rule XI of the Revised IRR of RA 9184, **all Heads of the Implementing Offices concerned are hereby directed to submit copies of the approved contracts and their corresponding NTPs to the Central Procurement Office, 5th Floor, DPWH Head Office, Port Area, Manila, immediately after issuance of the NTPs for their posting in the PhilGEPS and DPWH website.**

This Order amends DO 24, series of 2007, and other previous issuances inconsistent herewith.

This Order shall take effect immediately.


ROGELIO L. SINGSON
Secretary

Department of Public Works and Highways
Office of the Secretary



WIN2XS00261

"Annex A"

OMNIBUS LEVELS OF AUTHORITIES OF DPWH KEY OFFICIALS

DELEGATED AUTHORITY	District		Regional		Services		PMO		Bureau		Procurement Office for CW Head	Assistant Secretary	Under-secretary
	BAC	District Engineer	BAC	Director	Division Chief	Director	Assistant Proj. Dir.	Project Director	Assist Director	Director			
V PROCUREMENT													
A CONSULTANCY													
1 Project Procurement Management Plan (PPMP)		Approve P1.2M (Individual)		Approve P3M (Individual)		Approve P3M (Individual)		Approve P3M (Individual)		Approve P3M (Individual)			Designated Usec Approve
2 Annual Procurement Plan (APP)		Approve No Limit (Consolidated)		Approve No Limit (Consolidated)							Consolidate Central Office Indorse		Usec Operations CO Consolidated Recommend
3 DPWH Certified Funding Strategy per Contract		Budget Officer Certify Availability of Funds P1.2M		Budget Officer Certify Availability of Funds P3M		Planning Service issuance							
4 ABC*		Approve P1.2M		Approve P3M									BAC Recommend
5 Advertisement /Invitation	Approve P1.2M		Approve P3M										BAC Approve No Limit
6 Terms of Reference and Tender Documents Issuance	Approve P1.2M		Approve P3M										BAC Approve No Limit
7 Pre-Qualification (PQ)/Shortlisting	Approve P1.2M		Approve P3M										BAC Approve P5M
8 (Foreign-assisted Projects) Transmittal of PQ to LI													USEC over PMO concerned Approve
9 Approval of Resolution of Award		Approve P1.2M		Approve P3M									BAC Recommend
10 (Foreign-assisted Projects) Transmittal of Award to LI													USEC over PMO concerned Approve
11 Notice of Award & Notice to Losing Bidders	Approve P1.2M		Approve P3M										BAC Approve No Limit
12 Contract		Approve P1.2M		Approve P3M									BAC Recommend
13 Notice to Proceed		Approve		Approve				Approve					
Other Activities													
14 Failure of Bidding	Recommend	Approve P1.2M	Recommend	Approve P3M							Recommend		BAC Recommend
15 Negotiated Procurement	Recommend	Indorse	Recommend	Indorse									BAC Recommend
16 Blacklisting (Strikes)	Recommend	Indorse	Recommend	Indorse		Legal Review					Recommend		BAC Recommend

*For FAPs, this step occurs after bid submission.

Note: Limit is set as 6% of approved level of authority for civil works contracts.

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

RULE XI – AWARD, IMPLEMENTATION AND TERMINATION OF THE CONTRACT

Section 37. Notice and Execution of Award

37.1. Contract Award

- 37.1.1. The BAC shall recommend to the Head of the Procuring Entity the award of contract to the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid or the Single Calculated/Rated Responsive Bid after the post-qualification process has been completed.

To facilitate the approval of the award, the BAC shall submit the following supporting documents to the Head of the Procuring Entity:

- a) Resolution of the BAC recommending award;
- b) Abstract of Bids;
- c) Duly approved program of work or delivery schedule, and Cost Estimates;
- d) Document issued by appropriate entity authorizing the procuring entity to incur obligations for a specified amount; and
- e) Other pertinent documents required by existing laws, rules, and/or the procuring entity concerned.^(a)

- 37.1.2. Within a period not exceeding seven (7) calendar days from the date of receipt of the recommendation of the BAC, the Head of the Procuring Entity shall approve or disapprove the said recommendation. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the Head of the Procuring Entity shall approve or disapprove the said recommendation within four (4) calendar days. In the case of GOCCs and GFIs, the period provided herein shall be fifteen (15) calendar days. Within the same period provided herein, the BAC shall notify all losing bidders of its decision.

- 37.1.3. In case of approval, the Head of the Procuring Entity shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid. In the event the Head of the Procuring Entity 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.⁽ⁿ⁾

- 37.1.4. Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:

- a) Submission of the following documents within the prescribed period:
 - i) Valid JVA, if applicable, within ten (10) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be; or
 - ii) In the case of infrastructure projects, valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders, within thirty (30) calendar days from receipt by the bidder of the notice from the BAC that the bidder has the Lowest Calculated Responsive Bid, when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the contract to be as a pre-condition to the Notice of Award;
- b) Posting of performance security in accordance with Section 39 of this IRR;
- c) Signing of the contract as provided in Section 37.2 of this IRR; and
- d) Approval by higher authority, if required, as provided in Section 37.3 of this IRR.⁽ⁿ⁾

- 37.1.5. Contract award shall be made within the bid validity period provided in Section 28 of this IRR.^(a)

- 37.1.6. The BAC, through the Secretariat, shall post, within three (3) calendar days from its issuance, the Notice of Award in the PhilGEPS, the website of the procuring entity, if any, and any conspicuous place in the premises of the procuring entity.⁽ⁿ⁾

37.2. Contract Signing

- 37.2.1. The winning bidder shall post the required Performance Security and enter into contract with the procuring entity within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.^(a)

- 37.2.2. The procuring entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.^(a)

- 37.2.3. The following documents shall form part of the contract:

- a) Contract Agreement;
- b) Bidding Documents;
- c) Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals, and all other documents/statements submitted;
- d) Performance Security;
- e) Credit line in accordance with the provisions of this IRR, if applicable;
- f) Notice of Award of Contract; and
- g) Other contract documents that may be required by existing laws and/or the procuring entity concerned in the Bidding Documents, such as the

- iii) Verification and/or inspection and testing of the goods/product, after-sales and/or maintenance capabilities, in applicable cases, for the procurement of goods; and
 - iv) Ascertainment of the sufficiency of the bid security as to type, amount, form and wording, and validity period.
- c) Financial Requirements. To verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required CLC in the amount specified and over the period stipulated in the Bidding Documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction.

- 34.4. If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower.^(a)
- 34.5. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it.^(a)
- 34.6. Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid.^(a)
- 34.7. If the second bidder, however, fails the post-qualification, the procedure for post-qualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, is determined for award, subject to Section 37 of this IRR.
- 34.8. The post-qualification process shall be completed in not more than seven (7) calendar days from the determination of the Lowest Calculated Bid/Highest Rated Bid. In exceptional cases, the post-qualification period may be extended by the Head of the Procuring Entity, but in no case shall the aggregate period exceed thirty (30) calendar days.^(a)

Section 35. Failure of Bidding

- 35.1. The BAC shall declare the bidding a failure when:

- c) All bids fail to comply with all the bid requirements or fail post-qualification, or, ~~in the case of consulting services, there is no successful negotiation; or~~
 - d) The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause, to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR.
- 35.2. In order to determine the reason for the failed bidding, the BAC shall conduct a mandatory review and evaluation of the terms, conditions, and specifications in the Bidding Documents, including its cost estimates.^(a)
- 35.3. Based on its findings, the BAC shall revise the terms, conditions, and specifications, and if necessary, adjust the ABC, subject to the required approvals, and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21.2 of this IRR.^(a)
- 35.4. All bidders who have initially responded to the Invitation to Bid/Request for Expression of Interest and have been declared eligible or short listed in the previous biddings shall be allowed to submit new bids. The BAC shall observe the same process and set the new periods according to the same rules followed during the previous bidding(s).^(a)
- 35.5. Should there occur a second failure of bidding, the procuring entity may resort to negotiated procurement, as provided for in Section 53.1 of this IRR.

Section 36. Single Calculated/Rated and Responsive Bid Submission

A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

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

construction schedule and S-curve, manpower schedule, construction methods, equipment utilization schedule, construction safety and health program approved by the Department of Labor and Employment, and PERT/CPM for infrastructure projects.^(a)

37.3. Contract Approval by Higher Authority

When further approval of higher authority is required, the approving authority for the contract or his duly authorized representative shall be given a maximum of fifteen (15) calendar days from receipt thereof to approve or disapprove it. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is five (5) calendar days. In the case of GOCCs, the concerned board or its duly authorized representative shall be given a maximum of twenty-five (25) calendar days from receipt thereof to approve or disapprove it.

37.4. Notice to Proceed

37.4.1. The procuring entity shall issue the Notice to Proceed together with a copy of the approved contract to the successful bidder within three (3) calendar days from the date of approval of the contract by the appropriate government approving authority. However, for infrastructure projects with an ABC of Fifty Million Pesos (P50,000,000) and below, the maximum period is two (2) calendar days. The contract effectivity date shall be provided in the Notice to Proceed by the procuring entity, which date shall not be later than seven (7) calendar days from its issuance.^(a)

37.4.2. The procuring entity, through the BAC Secretariat, shall post a copy of the Notice to Proceed and the approved contract in the PhilGEPS or the website of the procuring entity, if any, within fifteen (15) calendar days from the issuance of the Notice to Proceed.⁽ⁿ⁾

Section 38. Period of Action on Procurement Activities

38.1. The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. All members of the BAC shall be on a "jury duty" type of assignment until the Notice of Award is issued by the Head of the Procuring Entity in order to complete the entire procurement process at the earliest possible time.

For purposes of this section, the term "jury duty" shall be understood to mean a state by which the members give utmost priority to BAC assignment over all the other duties and responsibilities until the requirements for the said assignments at hand are completed.

38.2. The maximum periods and earliest possible time for action on specific procurement activities are provided for in Annex "C" of this IRR. In case the deadline for each activity falls on a non-working day (i.e. Saturday and Sunday), legal holiday, or special non-working holiday, the deadline shall be the next working day.

38.3. If no action on the contract is taken by the Head of the Procuring Entity or the appropriate approving authority within the periods specified in this IRR, the contract concerned shall be deemed approved: *Provided, however, That where further*

approval by the Office of the President is required, the contract shall not be deemed approved unless and until the Office of the President gives actual approval to the contract concerned.

Section 39. Performance Security

39.1. To guarantee the faithful performance by the winning bidder of its obligations under the contract in accordance with the Bidding Documents, it shall post a performance security prior to the signing of the contract.

39.2. The performance security shall be in an amount equal to a percentage of the total contract price in accordance with the following schedule:

Form of Performance Security	Amount of Performance Security (Equal to Percentage of the Total Contract Price)
a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. ¹⁸	Goods and Consulting Services – Five percent (5%) Infrastructure Projects – Ten percent (10%)
b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. ¹⁹	
c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)
d) Any combination of the foregoing.	Proportionate to share of form with respect to total amount of security

For biddings conducted by LGUs, the prospective bidder may also submit performance securities in the form of cashier's/manager's check, bank draft/guarantee, or irrevocable letter of credit from other banks certified by the BSP as authorized to issue such financial instrument.^(a)

39.3. The performance security shall be denominated in Philippine Pesos and posted in favor of the procuring entity, which shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.⁽ⁿ⁾

39.4. The performance security shall remain valid until issuance by the procuring entity of the final Certificate of Acceptance.

39.5. The performance security may be released by the procuring entity after the issuance of the Certificate of Acceptance, subject to the following conditions:

a) Procuring entity has no claims filed against the contract awardee or the surety company;

¹⁸ Ibid.

¹⁹ Ibid.