

[EXECUTIVE ORDER NO. 40, October 08, 2001]

CONSOLIDATING PROCUREMENT RULES AND PROCEDURES FOR ALL NATIONAL GOVERNMENT AGENCIES, GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND GOVERNMENT FINANCIAL INSTITUTIONS, AND REQUIRING THE USE OF THE GOVERNMENT ELECTRONIC PROCUREMENT SYSTEM

WHEREAS, the principles of good governance call for transparency, accountability, equity, efficiency and economy in the government procurement process, and the eradication of malpractices, particularly graft and corruption;

WHEREAS, there is an urgent need to consolidate existing administrative orders, issuances, rules and regulations on the procurement of goods, civil works and consulting services and to develop a single set of rules that embodies a streamlined procurement process uniformly applicable to all government procurement;

WHEREAS, it is imperative that the procurement process be made adaptable to, and utilize advances, in modern technology;

WHEREAS, in the pursuit of good governance, the government shall adopt an electronic procurement process that will uniformly apply to all government procurement; and

WHEREAS, to enhance transparency in government procurement, the government shall encourage the public to monitor the procurement process and the awarding of contracts with the end in view of guaranteeing that these contracts are awarded pursuant to law.

NOW, THEREFORE, I GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

GENERAL PROVISIONS

SECTION 1. Scope and Application. This Executive Order shall apply to see procurement of: (a) goods, supplies, materials and related service; (b) civil works; and (c) consulting services, by all National Government agencies, including State Universities and Colleges (SUCs), Government-Owned or – Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), hereby referred to as "Agencies." This Executive Order shall cover the procurement process from the pre-procurement conference up to award of contract. Nothing in this Order shall negate any existing and future government commitments with respect to the bidding and award of contracts financed partly or wholly with funds from international financing institutions as well as from bilateral and other similar foreign sources.

SECTION 2. Statement of Policy. It is the policy of the government that procurement

shall be competitive and transparent and therefore shall be through public bidding, except as otherwise provided in this Executive Order.

SECTION 3. General Guidelines. Government procurement shall be guided by the following reform principles:

- a. Simplification of pre-qualification through the use of an eligibility check, and strengthening of post-qualification; b. Use of the Lowest Calculated and Responsive Bid as the criterion of award in the case of procurement of goods, supplies, materials and related services; and civil works; c. Use of the approved budget for the contract as the ceiling for the bid price and the award; and d. Use of transparent, objective and on-discretionary criteria which are included in the bid documents, in undertaking the eligibility check, evaluating bids and determining the winning bidder through post-qualification.

SECTION 5. Procurement of Common-use Supplies, Materials and Equipment. Agencies shall procure common-use supplies, materials and equipment from the Procurement Service (PS) attached to the Department of Budget and Management (DBM), in accordance with Letter of Instructions No. 755, Executive Order Nos. 289 series of 1987, 359 series of 1989, and 322 series of 2000, using the Electronic Procurement System (EPS) referred to in Section 37 of this Executive Order. Agencies without internet access may avail of the EPS Public Access Terminals which shall be installed DBM designated locations in the provinces and in Metro Manila: Provided, however, That agencies shall comply with Section 38 of this Executive Order. Small volume purchases by agencies, as defined in the implementing rules and regulations (IRR) of this Executive Order, through the electronic catalogue of non common-use goods, supplies and materials are allowed without need of public bidding.

SECTION 6. Manuals, Standard Bidding Documents and Training. The Procurement Policy Board (PPB), created under Executive Order No. 359 series of 1989, and the Committee on Infrastructure (Infracom) of the National Economic and Development Authority Board shall pursue the development of a generic procurement manual and standard bidding documents, and shall establish a sustainable training program for developing the capacity of the BACs, Secretariats and Technical Working Groups of the agencies.

BIDS AND AWARDS COMMITTEE

Section 7. The BAC and its Composition. Each agency shall establish a single Bids and Awards Committee (BAC) for its procurement. The BAC shall be chaired by at least a third ranking officer of the procuring entity, and its composition shall be specified in the IRR. Alternately, as may be deemed fit by the agency head, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the agency.

Section 8. Functions of the BAC. The BAC shall, among others, determine the eligibility of prospective bidders, receive and open bids, conduct the evaluation of bids, undertake postqualification proceedings, and recommend the award of contract. The scope of the BAC activities is from the pre-procurement conference up

to the recommendation of award. All members of the BAC shall be on "jury duty" type of assignment until the notice of award is issued by the agency head. Section 9. Observers. To enhance the transparency of the procurement process, the BAC shall invite, in addition to the representative of the Commission on Audit, at least two (2) observers from the relevant sectors to sit in and monitor the proceedings.

Section 10. Checks and Balances. The BAC chairperson and the official who shall approve the ensuing contract for the agency shall not be the same person.

Section 11. BAC Secretariat. The agency shall have a Secretariat or a designated organic office as the main support unit of the BAC(s). It shall be separately designated by the head of agency or the appropriate designating authority, and shall be under the supervision of the BAC(s). Similarly, a Secretariat may also be formed in decentralized and lower level offices to support the local BAC(s) that may be established.

Section 12. Technical Working Group. For each specific procurement, the BAC may create a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the evaluation of bids.

STANDARDIZED PROCEDURES FOR PUBLIC BIDDING

Section 13. Pre-Procurement Conference. Prior to the issuance of the invitation to bid, the BAC shall call a pre-procurement conference for each procurement, except for small procurement. 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 law. This shall be attended by the BAC, the unit or officials who prepared the bidding documents and the draft invitation to bid, including consultants hired by the agency concerned, as well as representatives of the end-user.

Section 14. Invitation to Bid. The invitation to bid shall contain, among others: a brief description of the items to be procured; the eligibility requirements; the place, date and time of the deadlines for receipt of eligibility requirements and bids; the approved budget for the contract to be bid; the time and place of the opening of bids; and the contract duration or delivery schedule. The invitation to bid shall be advertised in such manner and for such period of time as to ensure the widest possible dissemination, the details of which shall be provided in the IRR.

Section 15. Pre-Bid Conference. The BAC shall convene a pre-bid conference for contracts costing P1,000,000 or more to explain any of the requirements, terms and conditions, and specifications stipulated in the bid documents. For contracts below P1,000,000, the pre-bid conference is optional, at the discretion of the BAC.

Section 16. Eligibility Check of Prospective Bidders for the Procurement of: (a) Goods, Supplies, Materials and Related Services; and (b) Civil Works. The BAC or its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of (a) goods, supplies, materials and related services; and (b) civil works, based on submission of the eligibility requirements provided in the bidding documents. The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements and

authenticity of the said documents.

Section 17. Eligibility Check and Short Listing of Prospective Bidders for Consulting Services. The BAC of its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of consulting services using numerical ratings on the basis of the eligibility requirements provided in the bidding documents, to determine the short list of bidders whose bids shall be considered for evaluation. The short list shall consist of the highest ranked eligible bidders from three (3) to seven (7) in number, as predetermined by the BAC and as indicated in the invitation to bid. The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements and authenticity of the said documents.

Section 18. Submission and Receipt of Bids. A bid shall have two components, namely the technical and financial components which should be in separate sealed envelopes, 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, giving it 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.

Section 19. Bid Security. Except for the procurement of consulting services, each bid 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 agency within the stipulated time and shall furnish the required performance security. The amount and allowable forms of the bid security, as well as the manner by which it may be returned to the bidders, shall be provided for in the IRR, notwithstanding Sections 32 and 44 herein.

Section 20. Modification and Withdrawal of Bids. A bidder may modify his bid, provided that this is done at least five (5) calendar days before the deadline for the receipt of bids. The modification shall be submitted before the deadline for receipt of bids in a sealed envelope duly identified as a modification of the original bid and stamped received by the BAC. A bidder may also withdraw his bid or express his intention not to participate in the bidding before the deadline for the receipt of bids.

Section 21. Single Calculated/Rated and Responsive Bid Submission. A single calculated/rated and responsive bid shall be considered under of the following exceptional circumstances, notwithstanding the provisions of Section 17:

- a. If after advertisement, only one prospective bidder applies for eligibility check and he meets the eligibility check requirements, after which his bid is found to be responsive; b. If after advertisement, more than one prospective bidder applies for eligibility check but only one meets the eligibility check but only one meets the eligibility check requirements, after which his bid is found to be responsive; or c. If after the eligibility check of more than one bidder, only one bid is submitted and found to be responsive.

Section 22. Bid Opening and Examination. For the procurement of: (a) goods, supplies, materials and relevant services; and (b) civil works, 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 its financial component.

Section 23. Bid Evaluation. The BAC shall evaluate the financial component of the bids and correct it for minor deviations, such as computational errors, omissions and discounts, in accordance with the bidding documents to enable proper comparison of all eligible bids. Any adjustment to correct minor deviations shall be calculated in monetary terms to determine the calculated prices. The bids shall be ranked from lowest to highest in terms of their corresponding calculated prices. For the procurement of : (a) goods, supplies, materials and related services; and (b) civil works, the bid with the lowest calculated price shall be referred to as the "LOWEST CALCULATED BID."

Section 24. Bid Evaluation of Short Listed Bidders for Consulting Services. For the procurement of consulting services, the BAC shall evaluate bids of the short listed bidders and rank them using numerical ratings in accordance with the evaluation criteria stated in the bid documents. 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 referred to as the "HIGHEST RATED BID."

Section 25. Ceiling for Bid Price. The approved budget for the contract shall be the upper limit or ceiling for the bid price. Bid prices which 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. For this purpose, the approved budget for the contract shall be that approved by the head of the agency.

Section 26. Major Deviation. The BAC shall automatically disqualify a bid that contains a major deviation. A major deviation is a deviation in a bid that, if allowed, would not fulfill the purpose for which the bid was requested, or would prevent a fair comparison with bids that comply with the bidding documents, s defined in the IRR.

Section 27. Post qualification. The BAC shall undertake post qualification which involves the verification and validation of all documents submitted by the bidder with the Lowest Calculated Bid or the Highest Rated Bid, as they case may be, and all information or statements contained therein, to determine whether he satisfies all the requirements and conditions as specified in the bidding documents, in which case his bid shall be considered the "LOWEST CALCULATED AND RESPONSIVE BID" in the case of goods, supplies, materials, related services and civil works, or the "HIGHEST RATED AND RESPONSIVE BID" in the case of consulting services.

Section 28. Procurement Outsourcing. In order to hasten project implementation, agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by their heads, may request other agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function.

Section 29. Reservation Clause. The government reserves the right to reject any all