



The
**LEGAL
500**

**COUNTRY
COMPARATIVE
GUIDES 2021**

The Legal 500 Country Comparative Guides

Philippines

PUBLIC PROCUREMENT

Contributing firm

ACCRALAW



Atty. Melissa Angela G. Velarde

Partner | mgvelarde@accralaw.com

Atty. Maria Angeline L. Tayag

Senior Associate | mltayag@accralaw.com

Atty. Michael Ryan Natividad

Associate | mrnatividad@accralaw.com

Atty. Zyra Frances P. Aquilizan

Associate | zpaquilizan@accralaw.com

This country-specific Q&A provides an overview of public procurement laws and regulations applicable in Philippines.

For a full list of jurisdictional Q&As visit legal500.com/guides

PHILIPPINES

PUBLIC PROCUREMENT



1. Please summarise briefly any relationship between the public procurement / government contracting laws in your jurisdiction and those of any supra-national body (such as WTO GPA, EU, UNCITRAL)

The Government Procurement Reform Act (the “GPR”) which was enacted in 2003 is the general law that governs public procurement in the Philippines. The GPR applies to the procurement of infrastructure projects, goods and consulting services, regardless of the source of funds, whether local or foreign, by all branches and instrumentalities of the government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units.

The Philippines is not a party to the Agreement on Government Procurement of the World Trade Organization (the “WTO”), although the country participates in the Government Procurement Committee of the WTO as an observer since June 2019. Likewise, the Philippines has not adopted the UNCITRAL Model Law on Public Procurement.

Nonetheless, the GPR provides that any Treaty or International or Executive Agreement affecting the subject matter of the GPR to which the Philippines is a signatory shall be observed. The Implementing Rules and Regulations (the “IRR”) of GPR further provides that any Treaty or International or Executive Agreement in case of conflict between the terms of the Treaty or International or Executive Agreement and the IRR, the former shall prevail.

Unless the Treaty or International or Executive Agreement expressly provides another or different procurement procedures and guidelines, the GPR and its IRR shall apply to foreign-funded procurement of goods, infrastructure projects, and consulting services by the Government of the Philippines.

The Government of the Philippines negotiating panels

shall, as its default position, adhere to the GPR and its IRR, or at the very least, selection through competitive bidding, in all Foreign-funded Procurement. If the Treaty or International or Executive Agreement states otherwise, then the negotiating panel shall ensure that the reasons for the adoption of a different rule or method of procurement are clearly reflected in the records of discussion.

2. What types of public procurement / government contracts are regulated in your jurisdiction and what procurement regimes apply to these types of procurements?

The GPR applies to the procurement of goods, infrastructure projects and consulting services by **all** branches and instrumentalities of the government, including procurement done by non-central government (i.e., local government units). As a general rule, all procurement under the GPR shall be done through competitive bidding. Alternative modes of procurement are allowed under the GPR only in specific instances (please refer to the response to *Question 20* for further details).

Aside from the GPR, the following are the other procurement-related laws in the Philippines:

1. The Procurement of Goods, Infrastructure Projects and Consulting Services funded from Foreign Grants is excluded from the coverage of the GPR. Instead, this type of procurement is governed by Republic Act 8182, as amended by Republic Act 8555, entitled “An Act Excluding Official Development Assistance (ODA) from the Foreign Debt Limit in order to Facilitate the Absorption and Optimize the Utilization of ODA Resources, Amending for the Purpose Paragraph 1, Section 2 of Republic Act 4860, As Amended,” unless the Government of the Philippines and the foreign grantor/foreign or international financing

- institution agree otherwise.
2. The acquisition of real property is excluded from the coverage of the GPRA. It is governed by Republic Act 10752, entitled "An Act Facilitating the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects," and other applicable laws, rules and regulations.
 3. Public-Private sector infrastructure or development projects, which are fully or partially funded by the private sector, are governed by Republic Act 6957, as amended by Republic Act 7718, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended (the "BOT Law"). The BOT Law covers all infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency and undertaken through contractual arrangements as defined under the BOT Law. However, for the portions financed by the Government of the Philippines, in whole or in part, the provisions of the GPRA and its IRR shall still apply.

3. Are there specified financial thresholds at which public procurement regulation applies in your jurisdiction?

No. The GPRA applies to public procurement of infrastructure projects, goods and consulting services, regardless of the amount involved. There is no financial threshold for the GPRA to be applicable.

As a general rule, all procurement under the GPRA shall be done through competitive bidding. However, negotiated procurement is allowed for the procurement of goods, infrastructure projects and consulting services

of small value, where the amount involved does not exceed the thresholds specified in the law. For national government agencies, government-owned and/or controlled corporations ("GOCCs"), government financial institutions ("GFIs"), state universities and colleges ("SUCs") and autonomous regional government, negotiated procurement is allowed if the amount involved does not exceed One Million Pesos (₱1,000,000.00). For local government units ("LGUs"), the threshold for negotiated procurement depends on the type of the LGU (whether province, city or municipality) and class of the LGU (first class, second class etc.).

4. Are procurement procedures below the value of the financial thresholds specified above subject to any regulation in your jurisdiction? If so, please summarise the position.

As stated in the response to *Question 3*, the GPRA applies to public procurement of infrastructure projects, goods and consulting services, regardless of the amount involved. Small value procurement, however, need not undergo competitive bidding and may be conducted through negotiated procurement.

5. For the procurement of complex contracts*, how are contracts publicised? What publication or journal is used for these purposes?

As a general rule, all procurement under the GPRA shall be done through competitive bidding, regardless of the complexity of the contract or project involved.

The invitation to bid or request for expression of interest shall be advertised and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for 7 calendar days as certified by the head of the Bids and Awards Committee ("BAC") Secretariat of the procuring entity concerned. It shall also be posted continuously in the Philippine Government Electronic Procurement System ("PhilGEPS") website, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for 7 calendar days starting on date of advertisement. [1]

The PhilGEPS is the single, centralized electronic portal that serves as the primary and definitive source of information on government procurement.

If a procuring entity cannot post its opportunities in the PhilGEPS for justifiable reasons, it shall advertise the invitation to bid or request for expression of interest at least once in one newspaper of general nationwide circulation which has been regularly published for at least two years before the date of issue of the advertisement. Advertisement shall not be required for contracts to be bid with an Approved Budget for Contract (“ABC”) of Ten Million Pesos (₱10,000,000.00) and below for the procurement of goods, Fifteen Million Pesos (₱15,000,000.00) and below for the procurement of infrastructure projects, and Five Million Pesos (₱5,000,000.00) and below for the procurement of consulting services.

For the following alternative modes of procurement allowed under the GPRA (as discussed further in the response to *Question 20*), the procuring entity may dispense with the advertisement in the newspaper and posting requirement. In such case, the BAC Secretariat shall post the invitation or request for submission of price quotations/proposals in the PhilGEPS website, the website of the procuring entity concerned if available, and at any conspicuous places reserved for this purpose in the premises of the procuring entity for a period of at least three calendar days:

1. Limited Source Bidding;
2. Shopping for ordinary office supplies and equipment not available in Department of Budget and Management-Procurement Service (for ABC above Fifty Thousand Pesos (₱50,000.00));
3. Two Failed Biddings;
4. Small Value Procurement (For ABC above Fifty Thousand Pesos (₱50,000.00)); and
5. NGO Participation.

The recommended earliest possible time and maximum period allowed for the submission of bids under the GPRA, counted from the time the bid documents become available, are as follows: [2]

	Recommended Earliest Possible Time	Maximum Period Allowed
Procurement of Goods and Services	Day 20	Day 52
Procurement of Infrastructure Projects		
· Projects ₱50,000,000.00 and below	Day 20	Day 57
· Projects above ₱50,000,000.00	Day 20	Day 72
Procurement of Consulting Services	Day 27	Day 82

[1] 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, Rule VII, Sec. 21.2.1

[2] 2016 Revised Implementing Rules and Regulations of

the Government Procurement Reform Act, Annex C.

6. For the procurement of complex contracts, where there is an initial selection stage before invitation to tender documents are issued, what are typical grounds for the selection of bidders?

Under the GPRA, in general, competitive bidding is a one-stage process where bidders submit their eligibility documents, their technical proposal and their financial proposal, all on the bid submission date.

The two-stage process where bidders are required to submit eligibility documents in the first stage to determine who can submit bids in the second stage, is allowed only in the following instances:

a. In the procurement of consulting services, which 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: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. The BAC shall determine the set of criteria and rating system for short listing of consultants to be used for the particular contract to be bid, which shall consider the following, among others:

- Applicable experience of the consultant and members in case of joint ventures, considering both the overall experiences of the firm or, in the case of new firms, the individual experiences of the principal and key staff, including the times when employed by other consultants;
- Qualification of personnel who may be assigned to the job vis-à-vis extent and complexity of the undertaking; and
- Current workload relative to capacity.

The BAC shall recommend the short list of consultants to the Head of the Procuring Entity (“HoPE”) for consideration and approval. Only those shortlisted consultants shall then be allowed to submit a bid for the consulting project.

b. In the procurement of goods, where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the

problem of technically unequal bids is likely to occur. In the first stage, only the eligibility and the technical merits of the proposals received from eligible bidders are evaluated against the minimum required standards stipulated in the bidding documents. In the second stage, the bidders who qualified in the first stage shall be required to submit their revised technical tenders, including the price proposal, which will be evaluated by the BAC.

In addition to the foregoing, in the case of limited source bidding, which is an alternative mode of procurement allowed in the procurement of goods and consulting services in certain instances (as discussed further in the response in *Question 20*), the BAC prepares a list of pre-selected suppliers or consultants taking into consideration the following characteristics of the supplier/consultant:

1. Capability and resources to perform the contract taking into account their experience and past performance on similar contracts;
2. Capabilities with respect to personnel, equipment, or manufacturing facilities; and
3. Financial position.

After approval of the by the HoPE, the list shall be posted in the PhilGEPS website and only those included in the list may submit bids for the relevant project.

7. Does your jurisdiction mandate that certain bidders are excluded from tendering procedures (e.g. those with convictions for bribery)? If so what are those grounds of mandatory exclusion?

Yes. A suspended or blacklisted supplier, contractor, or consultant shall not be allowed to participate in all procurement opportunities of the government under the GPRA for the duration of the suspension or blacklisting.

A supplier, contractor or consultant may be suspended for offenses or violations committed during competitive bidding and during contract implementation. The suspension or blacklisting shall be imposed for one (1) year for the first offense and two (2) years for the second offense. The grounds for suspension or blacklisting are as follows:

1. Violations during the competitive bidding stage:
 1. Submission of eligibility requirements containing false information or falsified documents.
 2. Submission of bids that contain

false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding.

3. Allowing the use of one's name, or using the name of the name of another for purpose of public bidding.
 4. Withdrawal of a bid, or refusal to accept an award, or enter into contract with the government without justifiable cause, after he had been adjudged as having submitted the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.
 5. Refusal or failure to post the required performance security within the prescribed time.
 6. Refusal 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.
 7. Any documented unsolicited attempt by a bidder to unduly influence the outcome of the bidding in his favor.
 8. All other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding or submitting late bids or patently insufficient bids, for at least three (3) times within a year, except for valid reasons.
2. Violations during the contract implementation stage
 1. Failure of the contractor, due solely to his fault or negligence, to mobilize and start work or performance within the specified period in the Notice to Proceed ("NTP");
 2. Failure by the contractor to fully and faithfully comply with its contractual obligations without valid cause, or failure by the contractor to comply with any written lawful instruction of the procuring entity or its representative(s) pursuant to the implementation of the contract. For

- the procurement of infrastructure projects or consultancy contracts, lawful instructions include but are not limited to the following:
1. Employment of competent technical personnel, competent engineers and/or work supervisors;
 2. Provision of warning signs and barricades in accordance with approved plans and specifications and contract provisions;
 3. Stockpiling in proper places of all materials and removal from the project site of waste and excess materials, including broken pavement and excavated debris in accordance with approved plans and specifications and contract provisions;
 4. Deployment of committed equipment, facilities, support staff and manpower; and
 5. Renewal of the effectivity dates of the performance security after its expiration during the course of contract implementation.
3. Assignment and 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.
 4. For the procurement of goods, unsatisfactory progress in the delivery of the goods by the manufacturer, supplier or distributor arising from his fault or negligence and/or unsatisfactory or inferior quality of goods, as may be provided in the contract;
 5. For the procurement of consulting services, poor performance by the consultant of his services arising from his fault or negligence. Any of the following acts by the consultant shall be construed as poor performance:
 1. Defective design resulting in substantial corrective works in design and/or construction;
 2. Failure to deliver critical outputs

- due to consultant's fault or negligence; and
3. Specifying materials which are inappropriate, substandard, or way above acceptable standards.
 4. Allowing defective workmanship or works by the contractor being supervised by the consultant.
6. For the procurement of infrastructure projects, poor performance by the contractor or unsatisfactory quality and/or progress of work arising from his fault or negligence as reflected in the Constructor's Performance Evaluation System ("CPES") rating sheet. In the absence of the CPES rating sheet, the existing performance monitoring system of the procuring entity shall be applied. Any of the following acts by the constructor shall be construed as poor performance:
 1. Negative slippage of 15% and above within the critical path of the project due entirely to the fault or negligence of the contractor; and
 2. Quality of materials and workmanship not complying with the approved specifications arising from the contractor's fault or negligence.
 7. Willful or deliberate abandonment or non-performance of the project or contract by the contractor resulting to substantial breach thereof without lawful and/or just cause.
 8. In case it is determined *prima facie* that the contractor has engaged, before or during implementation of the contract, in unlawful deeds and behaviors relative to contract acquisition and implementation such as corrupt, fraudulent, collusive and coercive practices, drawing up or using forged documents, or suing adulterated materials, means or methods, or engaging in production contrary to the rules of science or the trade.

In addition to the grounds above, any person or entity that is in the "blacklist" of any foreign government or foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board (the "GPPB") may likewise be prohibited from participating in public procurement under the GPRA.

8. Please describe a typical procurement procedure for a complex contract. Please summarise the rules that are applicable in such procedures.

As a general rule, all procurement under the GPRA shall be done through competitive bidding.

Under the GPRA, the stages of a typical competitive bidding process (regardless of the complexity of the contract involved) are as follows:

1. **Preparation of Bidding Documents.** The BAC of the procuring entity prepares the bidding documents with all the information necessary for the prospective bidders following the standard forms and manuals prescribed by the GPPB.
2. **Pre-Procurement Conference.** The BAC holds a pre-procurement conference where it will assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as review the bidding documents and all relevant documents in relation to their adherence to law.
3. **Issuance of Invitation to Bid.** The procuring entity issues the Invitation to Bid/Request for Expression of Interest. Please refer to the response to *Question 5* for the manner by which the Invitation to Bid/Request for Expression of Interest should be advertised or posted.
4. **Pre-Bid Conference.** A pre-bid conference is convened by the BAC where it shall discuss, clarify and explain, among other things, the eligibility requirements and the technical and financial components of the contract to be bid including questions and clarifications raised by the prospective bidders.
5. **Submission and Receipt of Bids.** The BAC receives the bids on such date, time and place specified in the invitation to bid.

The following periods from the last day of posting of the Invitation to Bid/Request for Expression of Interest up to the submission and receipt of bids shall be observed:

1. For goods, a maximum period of 45 calendar days.
2. For infrastructure projects, a maximum period of 50 calendar days for projects with an approved budget of Fifty Million Pesos (₱50,000,000.00) or below, or 65 calendar days for projects with an approved budget above Fifty Million Pesos (₱50,000,000.00).

3. For consulting services, a maximum period of 75 calendar days.
6. **Opening of Bids.** The BAC opens the bids in public immediately after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the bidding documents.
7. **Bid Evaluation.** The BAC determines each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements (as contained in the first envelope of the bid submission). The BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion.

Immediately after determining compliance with the eligibility requirements in the first envelope, the BAC shall forthwith open the second bid envelope containing the financial bid of each remaining eligible bidder whose first bid envelope was rated "passed." Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison. Please refer to the response to *Question 11* for details on the bid evaluation process.

The entire evaluation process, including the submission of the results thereof to the HoPE for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of proposals.

8. **Post-qualification.** The Lowest Calculated Bid or the Highest Rated Bid, as the case may be, undergoes verification and validation whether the bidder has passed all the requirements and conditions as specified in the bidding documents. If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, the Bid shall be considered the "Lowest Calculated Responsive Bid" or "Highest Rated Responsive Bid" respectively.

If a bidder fails to meet any of the requirements or conditions, the bid shall be "post-disqualified" and the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid shall be conducted. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined.

9. **Notice and Execution of Award.** The BAC

recommends to the HoPE the award of the contract.

Within a period not exceeding 15 calendar days from the recommendation of the award, the HoPE or his duly authorized representative shall approve or disapprove the said recommendation and shall immediately issue the notice of award to the bidder.

Within 10 calendar days from receipt of the Notice of Award, the winning bidder shall post the required Performance Security and formally enter into contract with the procuring entity. The procuring entity shall enter into the contract with the winning bidder within the same 10day period, provided all documentary requirements are complied with by the winning bidder.

When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of 20 calendar days from receipt to approve or disapprove it. In the case of government-owned and/or - controlled corporations, the concerned board shall take action on the said recommendation within 30 calendar days from receipt thereof.

The procurement process from the opening of bids up to the award of contract shall not exceed 3 months, or a shorter period to be determined by the procuring entity concerned.

If no action on the contract is taken by the HoPE, or by his duly authorized representative, or by the concerned board, in the case of government-owned and/or - controlled corporations, within the periods specified in the preceding paragraphs, the contract concerned shall be deemed approved. However, 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.

The procuring entity shall issue the Notice to Proceed to the winning bidder not later than 7 calendar days from the date of approval of the contract by the appropriate authority.

Based on the GPRA IRR, the maximum period allowed for the procurement of goods is 136 calendar days from the date the bidding documents become available to the public. For the procurement of infrastructure projects, the maximum period is 141 calendar days (for projects P50,000,000 and below) and 156 calendar days (for projects above P50,000,000). For the procurement of consulting service, the maximum period allowed is 180 calendar days.

9. If different from the approach for a complex contract, please describe how a relatively low value contract would be procured?

The GPRA applies to public procurement of infrastructure projects, goods and consulting services, regardless of the amount involved.

The process described in the response to *Question 8* refers to a competitive bidding process, which is the general rule under the GPRA. For the procurement of goods, infrastructure projects and consulting services of small value, where the amount involved does not exceed the thresholds provided in the GPRA (please refer to the response in *Question 3* for details), the procurement process is abbreviated as follows:

1. The procuring entity may dispense with the requirement to advertise in the newspaper. The procurement announcement may be posted in the PhilGEPS website, the website of the procuring entity concerned, and at any conspicuous place in the premises of the procuring entity for a period of at least 3 calendar days (as opposed to at least 7 calendar days for competitive bidding).
2. The holding of a pre-procurement conference may not be required for small procurements, e., procurement of Goods costing Two Million Pesos (P2,000,000.00) and below, procurement of Infrastructure Projects costing Five Million Pesos (P5,000,000.00) and below, and procurement of Consulting services costing One Million Pesos (P1,000,000.00) and below.^[1]
3. For contracts to be bid with an ABC of less than One Million Pesos (P1,000,000.00), pre-bid conferences are not mandatory and may be conducted at the discretion of the BAC.
4. After the deadline for submitting quotations and proposals, the BAC will recommend to the HoPE the award of the contract in favor of the supplier or contractor with the Single or Lowest Calculated and Responsive Quotation (for goods or infrastructure projects) or consultant with the Single or Highest Rated and Responsive Proposal (for consulting services). Once approved, the HoPE shall immediately enter into a contract with the said supplier, contractor or consultant.

[1] 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, Rule VII, Sec. 20.2

10. What is seen as current best practice in terms of the processes to be adopted over and above ensuring compliance with the relevant regime, taking into account the nature of the procurement concerned?

The GPRA IRR provides that the PhilGEPS may support the implementation of e-Bid submission process, which includes the creation of electronic bid forms, creation of bid box, delivery of bid submissions, notification to the supplier of receipt of bids, bid receiving and electronic bid evaluation.

In line with this mandate to implement e-Bid procedures, the PHILGEPS is currently in the process of pilot-testing its Guidelines on E-Bidding on the procurement done by pilot agencies. The Guidelines on E-Bidding is expected to be finalized in the first half of 2021.

In 2020, the Government Procurement Policy Board ("GPPB") issued a Resolution No. 09-2020 which states that procuring entities may allow the submission of procurement related documents, except the submission and receipt of bids, through electronic mail or facsimile, subject to the submission of printed copies as soon as practicable, as determined by the BAC, and allowing the use of other forms of digital or electronic signature in all procurement related documents. While Resolution No. 09-2020 was issued primarily to address the state of calamity as a result of the COVID-19 pandemic, the resolution states that this particular measure on electronic submissions shall be allowed at any time, not just during a state of calamity.

11. Please explain any rules which are specifically applicable to the evaluation of bids.

In the one-stage competitive bidding process for the procurement of goods and infrastructure projects, the BAC shall open the first bid envelopes in public to determine each bidder's compliance with the documents required to be submitted for eligibility and for the technical requirements. the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders. The bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed." Otherwise, the BAC shall rate the said first bid envelope as "passed." Afterwards, the BAC will open the second bid envelope containing the financial proposal of each remaining eligible bidder whose first bid envelope was

rated "passed." In case any of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as "failed."

In the procurement of goods and infrastructure projects, the BAC shall rank the financial proposals 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.

For the procurement of consulting services, BAC shall conduct a detailed evaluation of bids using either of the following evaluation procedures as specified in the Bidding Documents:

1. Quality-Based Evaluation Procedure whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes.
2. Quality-Cost Based Evaluation Procedure whereby the technical proposal together with the financial proposal shall be considered in the evaluation of consultants. The technical proposals shall be evaluated first. The financial proposals of the consultants who meet the minimum technical score shall then be opened.

The technical proposals of consultants shall be evaluated based on the following criteria and using the corresponding numerical weights indicated in the Bidding Documents:

1. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
2. Experience and capability of the consultant which include records of previous engagement and quality of performance in similar and in other projects; relationship with previous and current clients; and, overall work commitments, geographical distribution of current/impending projects and attention to be given by the consultant. The experience of the consultant to the project shall consider both the overall experiences of the firm and the individual experiences of the principal and key staff including the times when employed by other consultants; and
3. Plan of approach and methodology with emphasis on the clarity, feasibility,

innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions.

For complex or unique undertakings, such as those involving new concepts/technology or financial advisory services, participating short-listed consultants may be required, at the option of the agency concerned, to make an oral presentation to be presented by each consultant, or its nominated Project Manager or head, in case of firms, within fifteen (15) calendar days after the deadline for submission of technical proposals.^[1]

In the two-stage competitive bidding process for the procurement of consulting services, the bids are 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."

The Lowest Calculated Bid or the Highest Rated Bid, as the case may be, shall thereafter undergo the post-qualification process.

^[1] 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, Rule IX.

12. Please describe any rights that unsuccessful bidders have that enable them to receive the reasons for their score and (where applicable in your jurisdiction) the reasons for the score of the winning bidder.

Under the GPRA, the evaluation of bids for the procurement of goods and infrastructure projects is based on the financial component of the bid, i.e., the bidder with the Lowest Calculated Bid (please refer to the response to *Question 8* under bid evaluation for further details on how this is determined) shall proceed to post-qualification. As the bids are opened in public where representatives of the bidders are invited to attend, the bidders are immediately informed during the bid opening of their standing with respect to the other bidders.

The scoring system is only applicable for the procurement of consulting services (as discussed in the response to *Question 11*). The bidder with the Highest

Rated Bid and all other participating shortlisted consultants that submitted a bid shall be furnished the results of the bid evaluation (ranking and total scores only), after the ranking has been approved by the HoPE. The results shall likewise be posted in the PhilGEPS and the website of the procuring entity for a period of not less than 7 calendar days.

13. What remedies are available to unsuccessful bidders in your jurisdiction?

Under the GPRA, decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing to the HoPE. Protests in writing to the HoPE may only be made after a request for a reconsideration was filed, and such request was denied by the BAC. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration. A protest shall be made by filing a verified position paper with the HoPE concerned, accompanied by the payment of a non-refundable protest fee.^[1]

Court action may be resorted to only after the protests with the HoPE shall have been completed, i.e., resolved with finality. The regional trial court shall have jurisdiction over final decisions of the HoPE. The decision of the HoPE may be challenged by a petition for *certiorari* on the ground that it acted without or in excess of its jurisdiction, with grave abuse of discretion amounting lack or excess of jurisdiction. It should be noted, however, that the Supreme Court has the sole jurisdiction to issue temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against the government or any of its subdivisions, officials or any person or entity, to restrain or prohibit the bidding or awarding of national government infrastructure projects.

^[1] 2016 Revised Implementing Rules and Regulations of the Government Procurement Reform Act, Rule XVII, Sec. 52

14. Are public procurement law challenges common in your jurisdiction?

Requests for reconsideration of decisions of the BAC of procuring entities (such as the decision to disqualify a bidder) are relatively common in the Philippines. However, once the BAC denies a motion for

reconsideration, protests made to the HoPE are much less common, mainly because such protests require the payment of a non-refundable protest fee, in the following amounts:

Approved Budget for the Contract ("ABC")	Protest Fee
₱50 million and below	0.75% of the ABC
More than ₱50 million to ₱100 million	₱500,000.00
More than ₱100 million to ₱500 million	0.5% of the ABC
More than ₱500 million to ₱1 billion	₱2,500,000.00
More than ₱1 billion to ₱2 billion	0.25% of the ABC
More than ₱2 billion to ₱5 billion	₱5,000,000.00
More than ₱5 billion	0.1% of the ABC

There is generally no reputational harm to a bidder's prospects in future procurement exercises if such bidder previously challenged an decision of the BAC, as this mode of challenging is a valid recourse under procurement laws.

15. Typically, assuming a dispute concerns a complex contract, how long would it take for a procurement dispute to be resolved in your jurisdiction (assuming neither party is willing to settle its case).

1. Protest Mechanism

Under the GPRA, the protest mechanism is comprised of the following stages:

Procedure	Timeline
1. Bidder files a request for reconsideration on a decision of the Bids and Awards Committee ("BAC")	Within three (3) calendar days upon receipt of written notice or upon verbal notification
2. BAC issues decision on the request for reconsideration	Within seven (7) calendar days from receipt of the request for reconsideration
3. In the event that the request for reconsideration is denied, bidder files a protest in writing with the HoPE	Within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its request for reconsideration
4. The HoPE resolves the protest	Within seven (7) calendar days from receipt thereof
5. If the protest is not resolved in favor of the protesting bidder, a petition for certiorari may be filed before the Regional Trial Court	The petition with the court may only be filed after the protest at the HoPE has been resolved with finality. Petitions at the first-level court in the Philippines usually take years to resolve, depending on the volume of the cases handled by the particular court.

2. Settlement of Disputes under Procurement Contracts

Under the GPRA, any and all disputes arising from the implementation of a procurement contract shall be submitted to arbitration in the Philippines according to the provisions of R.A. 876, otherwise known as the

"Arbitration Law" and R.A. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004". However, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. An institutional arbitration usually lasts between six (6) months to one (1) year. An *ad hoc* arbitration may take one (1) to two (2) years or more.

The arbitral award shall be appealable by way of a petition for review to the Court of Appeals. It may take years for such an appeal to be resolved by the Court of Appeals in the Philippines.

16. What rights/remedies are given to bidders that are based outside your jurisdiction?

If a foreign bidder is eligible to bid for the procurement of goods, infrastructure projects or consulting services under the GPRA (please refer to *Question 17* for eligibility rules), the rights and remedies of such foreign bidder are generally the same as the rights and remedies of a Filipino bidder under the GPRA.

However, the GPRA provides that a procuring entity shall give preference to the materials and supplies produced, made and manufactured in the Philippines. An award shall be made to the lowest domestic bidder who claims preference, provided that his bid is not more than 15% in excess of the lowest foreign bid, and it has provided the required certification that the articles forming part of its bid are substantially composed of materials, articles or supplies grown, produced or manufactured in the Philippines.

17. Where an overseas-based bidder has a subsidiary in your territory, what are the applicable rules which determine whether a bid from that bidder would be given guaranteed access to bid for the contract?

Under the GPRA and its IRR, for the procurement of goods, as a general rule, only Filipino citizens and corporations or partnerships duly organized in the Philippines of which 60% of interest belongs to Filipino citizens) are eligible to participate in public bidding. Foreign bidders may be eligible to participate in public bidding only under any of the following circumstances:

1. When provided for under any Treaty or International or Executive Agreement;
2. When the foreign supplier is a citizen, corporation or association of a country, the

laws or regulations of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines;

3. When the goods sought to be procured are not available from local suppliers; or
4. When there is a need to prevent situations that defeat competition or restrain trade.

For the procurement of infrastructure projects, as a general rule, only Filipino citizens and corporations or partnerships duly organized in the Philippines of which 75% of interest belongs to Filipino citizens) are eligible to participate in the public bidding. Foreign bidders may be eligible to participate in the procurement of infrastructure projects, only when provided for under any Treaty or International or Executive Agreement.

For the procurement of consulting services, as a general rule, only Filipino citizens and corporations or partnerships duly organized in the Philippines of which 60% of interest belongs to Filipino citizens) are eligible to participate in public bidding. However, foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required, as may be determined by the HoPE.

A subsidiary of an overseas-based bidder is considered a foreign bidder under the GPRA. If the subsidiary is eligible to bid as a foreign bidder under the GPRA based on the exceptions stated above, the subsidiary would be afforded the same rights and remedies as a nationally-owned company bidding in the Philippines, subject only to the Filipino preference rule as stated in our response to *Question 16*.

18. In your jurisdiction is there a specialist court or tribunal with responsibility for dealing with public procurement issues?

Under of the GPRA, court action may be resorted to only after protests against a decision of the BAC during the procurement process shall have been resolved with finality by the HoPE. The Regional Trial Court shall have jurisdiction over final decisions of the HoPE.

The Supreme Court has the sole jurisdiction to issue temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against the government or any of its subdivisions, officials or any person or entity, to restrain or prohibit the bidding or awarding of national government infrastructure projects.

With respect to disputes arising from the implementation of a procurement contract, under the GPRA and its IRR, such dispute shall be submitted to arbitration in the

Philippines. The arbitral award shall be appealable by way of a petition for review to the Court of Appeals.

19. Are post-award contract amendments/variations to publically procured, regulation contracts subject to regulation in your jurisdiction?

Under the GPRA and its IRR, an Amendment to Order, which refers to any necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirements of the project is allowed for the following:

1. Drawings, design or specifications of the goods, provided that:
 1. The goods to be furnished are to be specifically manufactured for the government in accordance therewith;
 2. The change is an improvement of the goods and advantageous to the government;
 3. It is done at no extra cost; and
 4. It is not prejudicial to the losing bidders in the sense that such change/s could not have been foreseen during the conduct of the bidding and would have significantly affected the other bidders' bids;
2. The method of shipment or packing;
3. The place of delivery;
4. The place of performance of the services;
5. Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract; or
6. Any other change affecting the specifications or scope of work of the goods and/or services to be procured.

Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect and to such an extent that, if introduced during the bidding stage, may have had a significant effect on other bidders' bids, because this situation would actually require another bidding activity, except if the original procurement was done through an alternative method that did not involve a bidding.

As a general rule, a contract awardee may not assign the

contract, or any of its rights or obligations arising from the contract, to a third party. This is because the contract was awarded based primarily on the eligibility requirements submitted by the contract awardee and assigning an awarded contract would in effect enable a non-bidder (whose eligibility was not previously determined by the BAC) to be awarded a contract.

20. How common are direct awards for complex contracts (contract awards without any prior publication or competition)?

As a general rule, all procurement under the GPRA shall be done through competitive bidding, regardless of the amount involved.

However, the GPRA allows alternative modes of procurement in certain instances, as follows:

1. **Limited Source Bidding, otherwise known as Selective Bidding** – This is a method of procurement that involves direct invitation to bid by the procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract. This alternative method of procurement may be employed under any of the following conditions:
 1. Procurement of highly specialized type of goods (e.g., sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available; or
 2. Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.
2. **Direct Contracting, otherwise known as Single Source Procurement** – This is a method of procurement that does not require elaborate bidding documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations. This may be resorted to under any of the following conditions:
 1. Procurement of goods of

proprietary nature which can be obtained only from the proprietary source (i.e., when patents, trade secrets and copyright prohibit others from manufacturing the same item);

2. When the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or
 3. Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which to suitable substitute can be obtained at more advantageous terms to the government.
3. **Repeat Order** – This is a method of procurement that involves a direct procurement of goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through competitive bidding. Repeat orders shall be subject to the following conditions:
 1. Unit prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;
 2. The repeat order will not result in splitting of contracts, requisitions or purchase orders;
 3. Shall be availed of only within six (6) months from the date of Notice to Proceed arising from the original contract, provided, that there has been a partial delivery, inspection and acceptance of the goods within the same 6-month period; and
 4. Repeat orders shall not exceed 25% of the quantity of each item in the original contract.
 4. **Shopping** – This is a method of procurement whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualification. This shall be employed in any of the following cases:
 1. When there is unforeseen

- contingency requiring immediate purchase, provided that the amount must not exceed the thresholds prescribed under the GPRA;
2. Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service, provided that the amount must not exceed the thresholds prescribed under the GPRA.
5. **Negotiated Procurement** - a method of procurement whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant, in any of the following cases:
1. Where there has been failure of competitive bidding or Limited Source Bidding for the second time.
 2. 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.
 3. Take-over of contracts which have been rescinded or terminated for causes provided for in the contract or 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.
 4. Where the subject contract is adjacent or contiguous to an ongoing infrastructure project or consulting service where the consultants have unique experience and expertise to deliver the required service, provided that:
 1. The original contract is a result of competitive bidding;
 2. The subject contract to be negotiated has similar or related scopes of work;
 3. It is within the contracting capacity of the contractor/consultant;
4. The contractor/consultant uses the same or lower unit prices as in the original contract less mobilization cost;
 5. The amount of the contiguous or adjacent work involved does not exceed the amount of the ongoing project;
 6. The contractor/consultant has no negative slippage or delay; and
 7. The negotiations for the procurement of the contiguous or adjacent work are commenced before the expiry of the original contract.
5. Procurement from another agency of the government.
 6. Where procurement can be contracted to a particular supplier, contractor or consultants as determined by the HoPE, such as for scientific, scholarly or artistic work, exclusive technology and media services, or for an infrastructure facility where the material, equipment or technology under a proprietary right can only be obtained from the same contractor.
 7. In case of individual consultants hired to do work that is (a) highly technical or proprietary, (b) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant, provided that the term of the individual consultants shall be on a six month basis at most, renewable at the option of the HoPE, but shall not exceed the term of such HoPE.
 8. Upon prior approval of the President, and when the procurement for use by the Armed Forces of the Philippines involves major defense equipment or material and/or defense-related consultancy services, when the

- expertise or capability required is not available locally, and the Secretary of National Defense has determined that the interest of the country shall be protected by negotiating directly with an agency or instrumentality of another country with which the Philippines has entered into a defense cooperation agreement or otherwise maintains diplomatic relations.
9. Small value procurement, where the amount involved does not exceed the thresholds prescribed in the GPRA IRR.
 10. Lease of real property and venue for official use.
 11. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to non-government organizations, the procuring entity may directly enter into a memorandum of agreement with an NGO.
 12. When in the interest of project sustainability or to achieve certain social objectives, it is desirable to call for participation of local communities.
 13. Procurement from specialized agencies of the United Nations, International Organizations or International Financing Institutions of any of the following:
 1. Small quantities of off-the-shelf goods, primarily in the fields of education and health
 2. Specialized products where the number of suppliers is limited, such as vaccines or drugs
 3. Goods, Infrastructure Projects and Consulting Services, involving advanced technologies, techniques and innovations not locally available, when it is most advantageous to the government

been sufficiently flexible to allow contracting authorities to respond to the COVID-19 pandemic? What measures have been most used and in what areas have any difficulties arisen? Is it likely that lessons learned from procurement during this period will give rise to longer term changes?

Republic Act No. 11494, otherwise known as the “Bayanihan to Recover as One Act”, authorized the GPPB to issue special procurement rules as exemptions from the provisions on the bidding process required under the GPRA to allow the government to procure critical and essential goods and services in the most judicious, economical and expeditious manner.

Pursuant to such mandate under the Bayanihan to Recover as One Act, the GPPB issued Circular No. 18-2020, under which procuring entities are allowed to directly negotiate or procure from a legally, technically and financially capable supplier for the procurement of highly needed supplies, materials and other critical services. Goods subject to these special rules include PPE such as gloves, gowns, masks, goggles, and face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hypochlorite, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension, oral rehydration solution, and cetirizine tablet and suspension); testing kits, and such other supplies or equipment as may be determined by the Department of Health and other relevant government agencies.

However, these special procurement rules were valid only until 19 December 2020, to coincide with the effective date of the Bayanihan to Recover as One Act. Nonetheless, it should be noted that even under the GPRA, negotiated procurement is allowed when there is imminent danger to life or property during a state of calamity.

In addition to the foregoing, the GPPB also issued a Resolution No. 09-2020 to address the state of calamity brought about by the COVID-19 pandemic. This resolution states that procuring entities may allow the submission of procurement related documents, except the submission and receipt of bids, through electronic mail or facsimile, subject to the submission of printed

21. Have your public procurement rules

copies as soon as practicable, as determined by the BAC, and allowing the use of other forms of digital or electronic signature in all procurement related

documents. Furthermore, this resolution also relaxed the rules on submission of notarized or apostilled documents in bid submission for the duration of the state of calamity.

Contributors

Atty. Melissa Angela G. Velarde
Partner

mgvelarde@accralaw.com

Atty. Maria Angeline L. Tayag
Senior Associate

mltayag@accralaw.com

Atty. Michael Ryan Natividad
Associate

mrnatividad@accralaw.com

Atty. Zyra Frances P. Aquilizan
Associate

zpaquilizan@accralaw.com