



17 May 2019

**ADMINISTRATIVE CIRCULAR**

NO. 05

Series of 2019

**SUBJECT: INSTITUTIONALIZATION OF THE FARMER'S AND FISHERFOLK'S ORGANIZATIONS OR ASSOCIATIONS' PARTICIPATION IN THE PROCUREMENT OF GOODS AND CIVIL WORKS PERTAINING TO THE NEEDS OF THE FARMERS AND FISHER FOLKS**

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Whereas, there is efficiency in the use of resources when beneficiaries of projects are engaged not just in determining their actual needs, but also in project procurement and implementation process;<sup>1</sup>

Whereas, participation is a key good governance dimension that is expected to improve the quality and responsiveness of public spending by aligning procurement with project sustainability and social objectives, thereby directly uplifting the economic, environmental, and social well-being of the communities;<sup>2</sup>

Whereas, recent trends toward participatory governance and community empowerment have enabled ordinary members of the community to have a more active role in procurement planning, actual procurement and contract implementation processes.<sup>3</sup>

Whereas, the procurement programs of the government should be effective in the context of providing answers to the needs of the agencies that are conducting the procurement as well as the farmers and fisherfolks that are the beneficiaries thereof;

Whereas, direct financial or material assistance that takes the form of goods, supplies or items that needs to be procured (e.g., relief goods) are subject to procurement rules and regulations in line with Section 3.5 of Circular No. 01-2017;<sup>4</sup>

Whereas, the Department recognizes the need for an open avenue for farmer's and fisherfolk's participation through representation particularly in project planning and the procurement program of the Department;

In order to empower farmer and fisherfolk and establish policies that are more efficient and responsive to their needs through mechanisms and processes that encourage participation in procurement and decision making in major projects and programs of the Department, the following measures are hereby adopted:

**I. SCOPE AND APPLICATION**

This Order shall apply to the Central Office, Bureau, Regional Field Offices, and Attached Agencies under this Department in the procurement of Goods and Civil Works pertaining to the needs of the farmers and fisher folks.

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<sup>1</sup> Chapter I, Manual on Community Participation in Government Procurement, p. 5

<sup>2</sup> 2.1, *Ibid*

<sup>3</sup> *Ibid*, p.5

<sup>4</sup> GPPB NPM No. 011-2018

## II. DEFINITION OF TERMS

1. **End User/Implementing Unit**– the unit/office responsible for the preparation of the Project Procurement Management Plans (PPMPs) for programs, activities, and projects (PAPs) and all pre-procurement documents necessary for procurement activity, including but shall not be limited to, the Technical Specifications, Scope of Work, or Terms of Reference,<sup>5</sup> and have direct supervision or administration over the implementation of the contract.<sup>6</sup>
2. **Farmer's and/or Fisherfolk's Organizations/Associations**– refers to farmer and fisherfolk's cooperative, associations, or corporations duly registered with appropriate government agencies and which are composed primarily of small agricultural producers, farmers, farm workers agrarian reform beneficiaries fisherfolk who voluntarily join together to form business enterprises or non-business organization which they themselves own, control and patronize.<sup>7</sup>
3. **Observers**- refers to the following: (1) a representative of the Commission on Audit; (2) an observer from a duly recognized private group in a sector or discipline relevant to the procurement at hand (e.g., Philippine Contractors Association for infrastructure); (3) an observer from a non-government organization (NGO); and (4) Farmer's and/or Fisherfolk's Organizations/Associations.

## III. PLANNING AND IDENTIFICATION OF PROJECTS

The Department hereby adopts a participatory process of project planning and identification<sup>8</sup> through farmer's and/or fisherfolk's participation with the following procedural requirements:

1. The End User/Implementing Unit shall identify project proposals in line with the procuring entity's strategic plan, key results areas, and major final outputs that will be procured with the participation of target farmer and/or fisherfolk beneficiary(ies);
2. The End-User/Implementing Unit shall prepare the objectives, requirements, estimated budget, outputs and target farmer and/or fisherfolk beneficiary(ies) of the selected project and present the same through consultation meeting with them for review and discussion.
3. The proposed projects that were found to be acceptable by the target farmer and/or fisherfolk beneficiary(ies) shall be included in the end user unit's PPMP and the procuring entity's approved APP.

Accordingly, the End-User/Implementing Unit concerned shall conduct the said consultation meeting or discussion with the target farmer and/or fisherfolk beneficiary(ies) for purposes of drawing up the farmer's and fisher folk's needs relative to Specifications, Scope of Work, and/or Terms of Reference of the proposed bidding project.

## IV. PRE-PROCUREMENT CONFERENCE

The Bids and Awards Committee (BAC) shall take into consideration the farmer's and/or fisherfolk's needs in the review of the Technical Specifications, Scope of Work, and Terms of Reference, assisted by the Technical Working Group (TWG) and End-User/Implementing

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<sup>5</sup> Section 7.3.2, IRR of RA No. 9184

<sup>6</sup> Section 7.3.5, Annex I (6), IRR of RA No. 9184

<sup>7</sup> Section 4, Republic Act No. 8435 also known as Agriculture and Fisheries Modernization Act of 1997

<sup>8</sup> Item 2.3 (A), Manual on Community Participation in Government Procurement

Unit prior to the conduct of bidding and in the preparation of bidding documents and agree on the final technical, legal and financial eligibility requirements of the procurement project.

However, reference to brand names shall not be allowed.<sup>9</sup> The BAC shall likewise ensure that the terms and conditions for the contract to be adopted will be more advantageous to the government.

#### **IV. OBSERVERS DURING THE BIDDING PROCESS**

To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the COA, at least two (2) observers to sit in its proceedings.<sup>10</sup>

Farmer and/or fisherfolks may affiliate<sup>11</sup> themselves with an organization duly registered with the Securities and Exchange Commission (SEC) or the Cooperative Development Authority (CDA) and, as observers, should meet the following criteria:<sup>12</sup>

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

In order to promote greater awareness and a more empowering participation of citizen stakeholders, qualified non-government organizations (NGOs) based in communities of project beneficiaries are encouraged to volunteer as observers in procurement activities in their locality.

##### **A. Observers Responsibilities<sup>13</sup>**

- a) To prepare the report either jointly or separately indicating their observations made on the procurement activities conducted by the BAC for submission to the HoPE, copy furnished the BAC Chairperson. The report shall assess the extent of the BAC's compliance with the provisions of this IRR and areas of improvement in the BAC's proceedings;
- b) To submit their report to the Procuring Entity and furnish a copy to the GPPB and Office of the Ombudsman/Resident Ombudsman. If no report is submitted by the observer within seven (7) calendar days after each procurement activity, then it is presumed that the bidding activity conducted by the BAC followed the correct procedure; and
- c) To immediately inhibit and notify in writing the Procuring Entity concerned of any actual or potential interest in the contract to be bid.

##### **B. Observer's Rights**

- a) Attend any or all stages of the procurement process;

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<sup>9</sup> Section 18, IRR of RA No. 9184

<sup>10</sup> Par. 3, II. Definition of Terms of this Administrative Circular

<sup>11</sup> 2014 Procurement Observer's Guide, p.6

<sup>12</sup> Section 13.2, IRR of RA No. 9184

<sup>13</sup> Section 13.4, *Ibid*

- b) Record what they have observed during any of the procurement proceedings;
- c) Access the following procurement related documents upon request and subject to signing of Confidentiality Agreement: such as Annual Procurement Plan (APP) and Project PPMP; Minutes of the BAC Meetings; Abstract of Bids; Opened Proposals and Post Qualification Summary Report.<sup>14</sup>

### C. Observer's Accountability<sup>15</sup>

- a) Observers shall observe the **Code of Conduct for Observers**<sup>16</sup> provided under the *2014 Procurement Observer's Guide* and may be held liable in cases of commission of prohibited acts, such as, the prohibition on conflict of interest, kickbacks, acceptance of gratuities, discussing detailed information with the bidders in support of the "no contact rule" under R.A. No. 9184 and its revised IRR.
- b) In case of failure to perform their duties and responsibilities or in case of inappropriate behavior during the bidding process, observers and the organizations they represent shall be accountable and liable for any or all actions in violation of the procurement law, its associated rules, and other procurement-related statutes, rules, and regulations during the procurement process.
- c) In as much as the law requires that observers must have knowledge, experience and expertise in procurement or in the subject matter of the contract to be bid, NGOs are encouraged to provide the necessary training and orientation to their members before deploying them as observers. It is strongly recommended that a thorough and rigid screening be performed to ensure the integrity of the NGO observer.
- d) Procuring entities may disqualify observers, or the NGO they represent, under Section 13.2(c) of the IRR wherein the BAC of the PE concerned may impose any other relevant criteria applying R.A. No. 9184, which the observers shall meet before being able to participate as an observer. Moreover, errant observers are not precluded from being charged with a civil or criminal case, when the circumstances so warrant and all the requisites are present, under existing civil and criminal laws.
- e) Observers shall not be granted honoraria for its participation in the procurement process in order to ensure their independence from any influence that the body it monitors may assert so that the integrity of its observations will not be compromised or tainted with bias.<sup>17</sup>
- f) A duly authorized observer may initiate the suspension and blacklisting proceedings against a bidder/s by filing a written complaint with the Bids and Awards Committee ("BAC") pursuant to 5.1, Appendix 17 *Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants*.

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<sup>14</sup> 2014 Procurement Observer's Guide, p.8

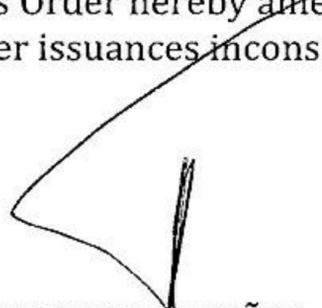
<sup>15</sup> *Ibid*, p.9

<sup>16</sup> *Ibid*, p.36-39

<sup>17</sup> GPPB NPM 037-2007 and NPM 011-2005

The foregoing provisions shall have suppletory application to the provisions of the revised IRR of RA No. 9184.

This Order hereby amends, repeals, revokes and renders of no force and effect any order or other issuances inconsistent herewith.

  
**EMMANUEL F. PIÑOL**  
Secretary

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