



Guidelines for Contracts with Public Authorities

5th Edition



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2023 Update

Public
Procurement

5th Edition

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Divina Law Philippines

1. Does your legal system provide specific procedures for the award of contracts by contracting authorities?

Yes. As embodied in Republic Act No. 9184 (**RA 9184**), otherwise known as the Government Procurement Reform Act, and its Implementing Rules and Regulations (**IRR**), the Philippines follows a procedure for the award of contracts by its contracting authorities. As a policy, all procurement in the Philippines shall be conducted through competitive bidding except as provided for in Article XVI of RA 9184.¹

The general procedure for the conduct of competitive bidding are as follows:

- a. preparation of bidding documents;
- b. pre-procurement conference;
- c. advertising of the Invitation to Bid;
- d. pre-bid conference;
- e. eligibility screening of prospective bidders;
- f. submission and receipt of bids;
- g. bid opening;
- h. preliminary examination of bids;
- i. bid evaluation;
- j. post-qualification;
- k. award of contract.²

The alternative methods of procurement provided under Art XVI of RA 9184 provides are as follows:

- (a) Limited Source Bidding, otherwise known as Selective Bidding — a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of preselected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;
- (b) Direct Contracting, otherwise known as Single Source Procurement — 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;
- (c) Repeat Order — 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;



(d) Shopping — 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; or

(e) Negotiated Procurement — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of RA 9184 and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.³

2. Do the procedures for the award of contracts depend on the kind of goods, services etc., which are to be procured?

As a general rule, the Procuring Entities shall adopt competitive bidding as the general method of procurement regardless of the kind of goods, services etc., which are to be procured. However, in certain exceptional circumstances, alternative methods of procurement may be conducted depending on, among others, the kind of the goods and services sought by procuring entities.

If the goods to be procured consists of:

a) **highly specialized types 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, such that resorting to the competitive bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or

b) **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.

then Limited Source bidding may be used as the procurement method of the procuring entity.⁴

On the other hand, Direct Contracting may be used as the procuring method of the procuring entity if the goods to be procured are:

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

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

c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.⁵

Lastly, Shopping may be conducted as a procuring method if the goods are ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding PHP250,000.00: Provided, however, that the Procurement does not result in Splitting of Contracts: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.⁶



3. Do the procedures for the award of contracts and/or certain procedural regulations depend on the value of the goods, services etc., which are to be procured (thresholds) and if so, what are the thresholds?

As mentioned earlier, as a rule, the procedure for the award of contracts must be through competitive bidding. However, alternative methods of procurement may be used in exceptional cases which will take into account, among others, the value of the goods or service to be procured. These include shopping and negotiated procurements to be discussed below.

Shopping is a method of procurement of goods 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 qualifications. This method of procurement shall be employed in any of the following cases:

a) When there is an unforeseen contingency requiring immediate purchase, the amount shall not exceed the following:

i. For National Government Agencies (NGA), Government-Owned and Controlled Corporations (GOCC), Government Financial Institutions (GFI), State Universities and Colleges (SUC), and Autonomous Regional Government, Two Hundred Thousand Pesos (₱200,000)

ii. For LGUs, in accordance with the following schedule:

Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 st Class	200,000	200,000	100,000
2 nd Class	200,000	200,000	100,000
3 rd Class	200,000	160,000	100,000
4 th Class	160,000	120,000	100,000
5 th Class	120,000	100,000	100,000
6 th Class	100,000	100,000	100,000

In the case of barangays, Fifty Thousand Pesos (₱50,000).

b) Procurement of ordinary or regular office supplies and equipment not available in the Department of Budget and Management – Procurement Service (DBM-PS), in the amount not to exceed the following:

i. For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱1,000,000)



ii. For LGUs, in accordance with the following schedule:

Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 st Class	1,000,000	1,000,000	200,000
2 nd Class	1,000,000	1,000,000	200,000
3 rd Class	1,000,000	800,000	200,000
4 th Class	800,000	600,000	100,000
5 th Class	600,000	400,000	100,000
6 th Class	400,000	200,000	100,000

In the case of barangays, Fifty Thousand Pesos (₱50,000).⁷

Negotiated Procurement is a method of procurement of Goods, Infrastructure Projects and Consulting Services, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

One example is the so-called Small Value Procurement (SVP) which pertains to those not covered by Shopping under Section 52 of the IRR of RA 9184, (b) infrastructure projects, and (c) consulting services, where the amount involved does not exceed the following threshold:

For NGAs, GOCCs, GFIs, SUCs, and Autonomous Regional Government, One Million Pesos (₱1,000,000).

For LGUs, in accordance with the following schedule:

DOF Classification of LGUs	Maximum Amount (in Philippine Peso)		
	Province	City	Municipality
1 st Class	1,000,000	1,000,000	200,000
2 nd Class	1,000,000	1,000,000	200,000
3 rd Class	1,000,000	800,000	200,000
4 th Class	800,000	600,000	100,000
5 th Class	600,000	400,000	100,000
6 th Class	400,000	200,000	100,000

In the case of barangays, Fifty Thousand Pesos (₱ 50,000).⁸



4. **In what way does the contracting authority have to inform the market about the intended procurement?**

The Invitation to Bid/Request for Expression of Interest, pursuant to Section 21.2.1 of the IRR of RA 9184, shall be:

- i) Posted at any conspicuous place reserved for this purpose in the premises of the Procuring Entity concerned for seven (7) calendar days as certified by the head of the Bids and Award Committee (BAC) Secretariat of the Procuring Entity concerned; and
- ii) Posted continuously in the 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 seven (7) calendar days starting on date of advertisement.

Procuring Entities that cannot post its opportunities in the PhilGEPS for justifiable reasons shall continue to publish its advertisements in a newspaper of general nationwide circulation. **9**

5. **Are calls for tender from contracting authorities published on a single or on multiple freely accessible website(s)? If yes, please name the website(s).**

It is published in multiple websites: the PhilGEPS website and the website of the Procuring Entity concerned.

The link of the PhilGEPS website is as follows: <https://notices.philgeps.gov.ph/>

Some websites of procuring entities are as follows:

<https://notices.philgeps.gov.phhttps://mmda.gov.ph/transparency/compliance-on-philgeps-posting-and-publication-of-bids-and-awards/99-transparency/itb-bid-docs-2024/6888-public-bidding-infra-2024.html>

https://www.dpwh.gov.ph/dpwh/business/procurement/cw/bid_bulletin

<https://dotr.gov.ph/2014-09-02-05-02-02/2014-09-03-06-36-20/2014-09-03-06-37-56.html>

<https://pnr.gov.ph/bids-awards/invitation-to-bid2/goods.html>

<https://www.doe.gov.ph/procurement/bid-bulletin>

<https://bcda.gov.ph/bids>

<https://dict.gov.ph/procurement/>

<https://dhsud.gov.ph/good-governance/procurement>

<https://nha.gov.ph/bid-opportunities-2023/>

https://www.da.gov.ph/bids_and_awards/



https://www.sss.gov.ph/sss/appmanager/sss_downloads.jsp?type=bid

<https://www.philhealth.gov.ph/suppliers/iaeb/index.html>

<https://www.bswm.da.gov.ph/itb/>

<https://www.pagibigfund.gov.ph/bidding.html>

<https://www.bir.gov.ph/index.php/bid-opportunities.html>

<https://lto.gov.ph/public-bidding/>

<https://www.peza.gov.ph/bid-opportunities>

<https://www.miaa.gov.ph/index.php/bids-and-awards/invitations>

<https://www.deped.gov.ph/category/procurement/bid-opportunities/>

<https://asti.dost.gov.ph/transparency/procurement/bids-and-awards/>

6. **Does a potential bidder that is interested in the contract need to have a specific legal form, e.g., corporation, to submit a tender?**

There is no specific legal form needed for potential bidders. In fact, the following are eligible to participate in the bidding for the supply of goods:

- a) Duly licensed Filipino citizens/sole proprietorships;
- b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- d) Cooperatives duly organized under the laws of the Philippines; or
- e) Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA. **10**



7. **Are bidders allowed to submit joint offers, e.g., as general contractor and subcontractor or as bidding consortium?**

Yes, joint offers are expressly allowed in the law and its IRR.

In case of joint venture, each partner of the joint venture must: (i) be registered in the PhilGEPS, (ii) secure Certified Membership Status, and (iii) electronically send their respective eligibility documents.

The joint venture partners must also identify and designate the Primary and Secondary Partner(s), as defined in the IRR.

Before the PhilGEPS will accept submissions of technical and financial proposals from the Primary Partner, there must be a confirmation from the Secondary Partner(s) as to existence of, or agreement to enter into, a joint venture.

Upon Confirmation, the Primary Partner shall be required by PhilGEPS to upload the Joint Venture Agreement or a duly notarized statement. **11**

In the bidding for the supply of goods, persons/entities forming themselves into a joint venture are allowed to participate in the bidding. For this, the Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). **12** The Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

The same applies to bidding for Infrastructure Projects, as defined in RA 9184 and its IRR. However, in accordance with Executive Order No. 65 (EO 65), s. 2018, Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). Further, in case the joint ventures in which Filipino ownership or interest is less than sixty percent (60%), it may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the sixty percent (60%) Filipino ownership requirement. In the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

8. **Do potential bidders interested in the contract need to have a registered office or branch office in your country or is it possible to submit a tender for the contract directly from abroad?**

No. There is no requirement under RA 9184 or its IRR that bidders must have a registered office or branch office in the Philippines before they can submit a tender because the submission of bids may be done through online. Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, or two (2) password-protected Bidding Documents in compressed archive folders, in case of electronic bid submission, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under Section 23.1 of the IRR for the procurement of Goods and Infrastructure Projects, and the second shall contain the financial component of the bid. **13**



In fact, for foreign bidders, they may secure registration documents by uploading and maintaining in PhilGEPS a current and updated file of the appropriate equivalent documents in English issued by the country of the bidder concerned.

- a) Registration Certificate;
- b) Mayor's/Business Permit or its Equivalent Document;
- c) Tax Clearance;
- d) Philippine Contractors Accreditation Board (PCAB) license and registration; and
- e) Audited Financial Statements. 14

9. If it is possible for foreign bidders to submit a bid for a contract to a contracting authority directly from abroad, does the foreign bidder have to consider certain additional aspects, such as having to provide certain additional supporting documents or whether domestic bidders receive preferences in the award of contracts?

Yes, foreign bidders have to consider certain additional aspects such as eligibility requirements and preference of domestic bidders in the award of contracts.

For the procurement of goods, foreign bidders may be eligible to participate under any of the following circumstances in accordance with the guidelines issued by the Government Procurement Policy Board (GPPB):

- a) When provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR;
- b) 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;
- c) When the goods sought to be procured are not available from local suppliers; or
- d) When there is a need to prevent situations that defeat competition or restrain trade. **15**

Foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, are required to submit a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product. **16**

If the procurement is for consulting services, foreign consultants may be hired only in the event that Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the Head of Procuring Entity (HoPE) subject to the submission of the documents in accordance with Section 37.1.4(a)(iii). **17**

Foreign bidders may be eligible to participate in the procurement of Infrastructure Projects when provided for under any Treaty or International or Executive Agreement as provided in Section 4 of the Act and this IRR. **18**



Consistent with the Government of the Philippine's obligations under international treaties or agreements, goods may be obtained from domestic or foreign sources provided, however, that the procurement thereof shall be open only to eligible suppliers, manufacturers and distributors. Further, in the interest of availability, efficiency and timely delivery of goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in accordance with the provisions of Commonwealth Act No. 138. **19**

Additionally, due to the preference afforded to Filipinos, the Procuring Entity shall give preference to materials and supplies produced, made and manufactured in the Philippines, subject to the conditions herein below specified. The award shall be made to the lowest Domestic Bidder, provided his bid is not more than fifteen percent (15%) in excess of the lowest Foreign Bid. **20** This means that the foreign bid will still not be selected even if it is the lowest bid if it is not lower than fifteen percent (15%) from the bid of the domestic bidder. Therefore, for evaluation purposes, the lowest Foreign Bid shall be increased by fifteen percent (15%). **21**

In the procurement of infrastructure projects, foreign contractors may be eligible to participate in the bidding when provided for under any treaty or international or executive agreement as provided under Section 23.4.2.2 of the IRR of R.A. 9184 or if they form a joint venture with local contractors; provided that their interest in or ownership of the joint venture shall not exceed twenty-five percent (25%). However, where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity which meets the seventy-five percent (75%) under Section 23.4.2.1 of the IRR of R.A. 9184, they may be eligible to participate in the bidding. **22**

10. **Is a multinational bidding consortium allowed to submit a bid?**

Yes, a multinational bidding consortium is allowed to submit a bid. However, it must be emphasized that there is a required percentage of Filipino ownership depending on the object of procurement.

Sec. 23.4.1.1 of the IRR of RA 9184 states: The following shall be eligible to participate in the bidding for the supply of goods:

xxx

e) Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.

Sec 23.4.2.1 on the other hand provide: The following persons/entities shall be allowed to participate in the bidding for Infrastructure Projects:

xxx

e) Persons/entities forming themselves into a joint venture, i.e., a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That in accordance with Executive Order No. 65 (EO 65), s. 2018, Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%): Provided, further, That joint ventures in which Filipino ownership or interest is less than sixty percent (60%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by a person/entity meeting the sixty percent (60%) Filipino ownership requirement: Provided, finally, That in the latter case, Filipino ownership or interest shall not be less than twenty-five percent (25%). For this purpose, Filipino ownership or interest shall be based on the contributions of each of the members of the joint venture as specified in their JVA.



11. In which language do the tenders have to/can be submitted and which form is required, e.g., written form, fax, e-mail, or digital?

Tenders to bid must be in the English language. In case of foreign bidders, the eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines. **23**

As to the form in which tenders must be in, bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, or two (2) password-protected Bidding Documents in compressed archive folders, in case of electronic bid submission, and which shall be submitted simultaneously. **24**

12. Are there any legal regulations governing the time within which bids have to/can be submitted to the contracting authority?

Yes. The IRR has set specific periods within which bids must be submitted.

Bids shall be received by the Bids and Awards Committee (BAC) on the date, time, and place specified in the Invitation to Bid/Request for Expression of Interest. 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:

a) For Goods, a maximum period of forty-five (45) calendar days.

b) For Infrastructure Projects, the following maximum periods:

ABC (in Philippine currency)	Period
Fifty (50) million and below	50 calendar days
Above fifty (50) million	65 calendar days

c) For Consulting Services, a maximum period of seventy-five (75) calendar days. **25**

Bids, including the eligibility requirements, submitted after the deadline shall not be accepted by the BAC. The BAC shall record in the minutes of bid submission and opening, the bidder's name, its representative and the time the late bid was submitted or in case of online or electronic bid submission, generate a Bid receipt page for the official time of late submission which can be saved or printed by the bidder. **26**



13. Can the bidders claim their costs for preparing their bid? If so what are the conditions for and the maximum amount of reimbursement?

The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. **27**

However, Bidding Documents Fee may be refunded based on the grounds provided for under Section 41 of the Act and the IRR. **28**

14. Are there any selection criteria set by law that bidders have to satisfy to in order to receive the award of a contract and can the contracting authority establish its own additional selection criteria?

For the Procurement of Goods and Infrastructure, the law requires that the winning bid should be the "Lowest Calculated Responsive Bid". If the object of procurement is Consulting Services, the law requires that the winning bid should be the "Highest Rated Responsive Bid".

Section 32 of RA 9184 provides that for the procurement of Goods and Infrastructure Projects, the BAC shall evaluate the financial component of the bids. The bids that passed the preliminary examination shall be ranked from lowest to highest in terms of their corresponding calculated prices. The bid with the lowest calculated price shall be referred to as the "Lowest Calculated Bid."

On the other hand, Section 33 provides that for the Procurement of Consulting Services, the Bids of the short listed bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria stated in the Bidding Documents, which shall include factors such as, but not limited to, experience, performance, quality of personnel, price and methodology. The Bids shall be ranked from highest to lowest in terms of their corresponding calculated ratings. The Bid with the highest calculated rating shall be the "Highest Rated Bid."

After approval by the HoPe of the Highest Rated Bid, the BAC shall invite the bidder concerned for negotiation and/or clarification on the following items: financial proposal submitted by the bidder, terms of reference, scope of services, methodology and work program, personnel to be assigned to the job, services/facilities/data to be provided by the Procuring Entity concerned, and provisions of the contract. When negotiations with the first-in-rank bidder fails, the financial proposal of the second rank bidder shall be opened for negotiations, provided that the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the ABC. Whenever necessary, the same process shall be repeated until the bid is awarded to the winning bidder.

It is important to note that the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes post-qualification process to verify whether he 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, his Bid shall be considered the "Lowest Calculated Responsive Bid," in the case of Goods and Infrastructure or the "Highest Rated Responsive Bid," in the case of Consulting Services. However, if a bidder fails to meet any of the requirements or conditions, he shall be "post-disqualified" and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculated Bid or Highest Rated Bid. 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.



It must be emphasized also that the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, as determined by the BAC, is still subject to the approval of the HoPE. Only after approval of the HoPE will the contract be awarded to the winning bid through the issuance of Notice of Execution and Award under Section 37 of RA 9184.

15. Does your legal system provide legal protection against the proposed award of a contract to a competing bidder even before the contract with the competitor is actually awarded (primary legal protection)? If so, please generally explain the proceedings. Is such a primary legal protection available to foreign bidders without any restriction?

Yes, RA 9184 and its IRR has protest mechanisms available to bidders to question the decisions of the BAC and the HoPE. Furthermore, the protest mechanism set forth in the law did not make a distinction as to who may invoke it, therefore, foreign bidders may avail of such without any restriction.

In summary, the proceedings consist of the following:

a) Decisions of the BAC at any stage of the procurement process may be questioned by filing a request for reconsideration within the three (3) calendar days upon receipt of written notice or upon verbal notification. **29**

b) In the event that the request for reconsideration is denied, decisions of the BAC may be protested in writing before the HoPE provided, however, that a prior request for reconsideration should have been filed by the party concerned, and the same has been resolved. **30**

c) 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, which shall be paid in cash in accordance with the following schedule : **31**

Approved Budget for the Contract (ABC) Range	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

d) The protests shall be resolved strictly on the basis of records of the BAC. The HoPE shall resolve the protest within seven (7) calendar days from receipt thereof. Subject to the provisions of existing laws on the authority of Department Secretaries and the heads of agencies, branches, constitutional commissions, or instrumentalities to approve contracts, the decisions of the HoPE concerned shall be final up to the limit of his contract approving authority. With respect to LGUs, the decision of the local chief executive shall be final. **32**

e) In no case shall any protest taken from any decision stay or delay the bidding process provided, however, that protests must first be resolved before any award is made. **33**

f) Court action may be resorted to only after the protests shall have been completed, i.e., resolved by the HoPE with finality. The regional trial court shall have jurisdiction over final decisions of the HoPE. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure. **34**



16. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services, etc., to be procured? If so, what are the conditions?

No, the protest mechanism set forth under the law does not depend on certain threshold..

17. If there is no primary legal protection, is there legal protection granted after the contract has been awarded, e.g., through damage claims, etc. (secondary legal protection)? If so, what are the principal conditions that have to be presented to a court in order to receive a damage award?

The primary legal protection discussed above does not preclude the available secondary legal protection.

If an aggrieved party has proof that contracting authorities who awarded contracts abused their right and discretion with the intent to injure another or favor one party, damages arising from tort or quasi-delict may be claimed. Article 19 of the Civil Code of the Philippines lay down the Principle of Abuse of Rights which provides that, "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." On the other hand, Article 21 of the Civil Code of the Philippines lay down the Acts Contra Bonos Mores which provides that, "Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." However, the aggrieved party has the burden of proof in establishing, by competent proof and best evidence obtainable, the abused rights and damages suffered.

Another available cause of action may be found in the criminal laws of the Philippines. Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, includes "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence" as one of the punishable corrupt practices that may be committed by public officers, including those officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. In this context, it is required that the undue injury be specified, quantified and proven to the point of moral certainty. **35**



DIVINALAW
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16. If primary legal protection exists in your country, does it depend on certain conditions, i.e., certain thresholds or the kind of goods, services, etc., to be procured? If so, what are the conditions?

No, the protest mechanism set forth under the law does not depend on certain threshold..

18. Can your office

i. give legal advice to foreign clients concerning the relevant formal conditions for preparing a proper bid, etc., and assist in the procurement procedure in your country?

Yes. DivinaLaw is a leading full-service law firm in the Philippines composed of experienced and qualified lawyers from different areas of legal practice, including public bidding and procurement.

Our clients include leading companies in banking and finance, manufacturing, retail, power, oil and gas, education, health care and insurance, realty, and property development, and technology. Our lawyers are some of the most qualified and experienced in their respective fields, and we recruit only the top graduates from the leading law schools.

ii. represent foreign clients seeking primary and secondary legal protection before all public offices/courts in your country?

Yes. DivinaLaw, being a leading full-service law firm in the Philippine, may represent foreign clients seeking primary and secondary legal protection before all public officers/courts in the Philippines.

Our practice includes the entire spectrum of Philippine law. Our litigation practice covers corporate, criminal and civil litigation, alternative dispute resolution, estates and trusts, immigration, labor and employment, elections, administrative regulation, and maritime law. Our corporate practice includes banking and finance, construction, mergers and acquisition, foreign investments, securities, corporate rehabilitation, insurance, public-private partnerships, mining and natural resources, energy, utility regulation, intellectual property, sports and entertainment, and taxation.

iii. Please name a contact person within your office for questions of public procurement law

Name: Atty. Enrique V. Dela Cruz, Jr. (Senior Partner of DivinaLaw)

Email Address: enrique.delacruz@divinalaw.com

