



Technical Report

Points of Disagreement between the Procurement Manuals and Philippine Bidding Documents

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Prepared for

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Submitted for review to

USAID/Philippines OEDG

July 2005



Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

This technical report was written by Atty. Jose Luis C. Syquia at the request of Undersecretary Laura B. Pascua, Department of Budget and Management, Republic of the Philippines, in order to reconcile new procurement manuals with official Philippine bidding documents. Following the technical report are four slide presentations of Atty. Syquia's findings, one for each of the four procurement manuals reviewed.

The views expressed and opinions contained in this publication are those of the author and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

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ABBREVIATIONS AND ACRONYMS

*ADB	Asian Development Bank
*BAC	Bids and Awards Committee
*BDS	Bid Data Sheet
*BSP	Bangko Sentral ng Pilipinas
*CA	Commonwealth Act
*CAF	Certificate of Availability of Funds
*COA	Commission on Audit
*DBM	Department of Budget and Management
*EGTA	Economic Government Technical Assistance Project, supported by USAID
*EMERGE	Economic Modernization through Efficient Reforms and Governance Enhancement Project, supported by USAID
*E.O.	Executive Order
*GAA	General Appropriations Act
*G-EPS	Government Electronic Procurement System
*GFI	Government Financial Institutions
*GOCC	Government-owned and/or –controlled corporation
*GOP	Government of the Philippines
*GPPB	Government Procurement Policy Board
*GPRA	Government Procurement Reform Act (R.A. 9184)
*IAEB	Invitation to Apply for Eligibility and to Bid
*IFI	International Financing Institution
*IRR	Implementing Rules and Regulations
*IRR-A	The Implementing Rules and Regulations Part A of R.A. 9184
*ITB	Instructions to Bidders
*JBIC	Japan Bank for International Cooperation
*LGU	Local Government Unit
*LOI	Letter of Intent
*NGA	National Government Agency
*NGO	Non-governmental Organization

*PBD	Philippine Bidding Documents for Goods (As Harmonized with ADB, JBIC and WB), Works (As Harmonized with ADB, JBIC and WB) and Consulting Services (As Harmonized with WB)
*PM	Procurement Manual
*PS	Procurement Service of DBM
*R.A.	Republic Act
*R.A. 9184	Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"
*SUCs	State Universities and Colleges
*TWG	Technical Working Group
*USAID	United States Agency for International Development
*WB	World Bank

BACKGROUND

Public procurement reform in the Philippines was recently institutionalized through the enactment of R.A. 9184, otherwise known as the “Government Procurement Reform Act,” on January 10, 2003. This law was immediately published the next day (January 11, 2003), and took effect fifteen (15) days thereafter, or on January 26, 2003. R.A. 9184 is intended to standardize the GOP’s procurement system, and make it more predictable and competitive, by promoting the principles of transparency, accountability, efficiency, equity, economy and effectiveness. Needless to say, R.A. 9184 is a major reform measure that was prioritized by the GOP to check leakages in public funds brought about by grand scale graft and corruption, as part of the overall effort to achieve good governance in the Philippines. As such, R.A. 9184 applies to the procurement of goods, infrastructure projects and consulting services, by all branches and instrumentalities of the Government, its departments, offices and agencies, including GOCCs and LGUs. The IRRs were subsequently issued on September 18, 2003.

Section 75 of R.A. 9184 requires that, for a period not later than thirty (30) days upon the approval of the IRR of the GPRA, the standard forms for procurement shall be formulated and approved. In relation to this, Section 6 of R.A. 9184 provides that the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which once issued shall be mandatory upon all procuring entities. Furthermore, Section 16 of R.A. 9184 provides that the GPPB shall establish a sustained training program for developing the capacity of the BACs, the BAC Secretariats and the TWGs, and shall professionalize these.

With this relatively new omnibus procurement law in tow, the GOP then began dialogues to harmonize its procurement rules with the national/local competitive bidding guidelines of WB, ADB and JBIC. After nineteen months of discussion meetings among the GOP, ADB, JBIC and WB, on August 20, 2004, through GPPB Resolution No. 10-2004 (amended by GPPB Resolution No. 01-2005, dated January 24, 2005) the First Edition of the standardized bidding documents – the PBDs – were issued, and the mandatory use of these documents for all procurement activities was required by June 2005. The PBDs consist of the following:

- PBDs for the Procurement of Goods, as harmonized with ADB, JBIC and WB
- PBDs for the Procurement of Works, as harmonized with ADB, JBIC and WB
- PBDs for the Procurement of Consulting Services, as harmonized with WB

The GPPB TSO recently issued on May 2005 the Second Edition of the PBDs. Procurement Manuals were also drafted with funding from USAID under an EGTA project. Through technical assistance from WB, these Manuals were then reviewed from March 1 to May 31, 2005, to ensure consistency with R.A. 9184, its IRR-A and the PBDs.

THE PROJECT, OBJECTIVES AND APPROACH

For the reason that the PBDs and the Procurement Manuals were crafted on the basis of parallel efforts, and due to the fact that the PBDs are constantly undergoing revisions (the latest development of which is the issuance of the Second Edition on May 2005), DBM Undersecretary Laura B. Pascua sought the assistance of EMERGE to make an independent evaluation on the consistency of these two (2) documents. After this final check on the alignment of the draft Procurement Manuals and the PBDs, the GPPB will officially issue the Procurement Manuals. Concurrent with this, DBM consultants, hired through the WB IDF grant, are pilot testing the current version of the Procurement Manuals in nine (9) pre-selected agencies, for purposes of tailor-fitting the Manual to the specific requirements of these agencies. It is therefore necessary to complete this independent evaluation soonest so that it may not only serve as an invaluable input to the final version of the Procurement Manuals, but also in order that it may serve as a guide in the crafting of the nine (9) Agency Procurement Manuals.

In line with the above, the objectives of this project are as follows:

- Assess the alignment of the draft Procurement Manuals and the PBDs, identify key points of divergence and, based on said evaluation, revise the draft Procurement Manuals
- Document best practices and business processes in the procurement of goods, works and consulting services

It was stated earlier that the Procurement Manuals were initially reviewed to ensure consistency with R.A. 9184, its IRR-A and the PBDs. However, it should be pointed out that this review only covered the Volumes of the Manuals on the procurement of goods, works and consulting services, thereby excluding Volume I, which covers Guidelines on Establishing Procurement Systems and Organization. As such, it is expected that there would be more comments and recommended changes for Volume 1 than with the other Volumes. With respect to the latter Volumes, an independent evaluation on consistency is also needed because, as noted above, the PBDs have recently undergone another major revision. This evaluation would also focus on the attached standard bidding forms.

To provide a comprehensive assessment of the Procurement Manuals vis-à-vis the PBDs, and to incorporate best practices and business processes thereto, a table with three (3) columns will be utilized – the first column will identify the section of the Manual for which an issue exists, the second column will identify the related provision in the PBDs, if any, and the third column will provide for the explanations, observations and recommendations, citing the relevant provisions of R.A. 9184, its IRR-A, other laws, jurisprudence and observed best practices/business processes.

TECHNICAL EVALUATION: VOLUME I

Procurement Manual (PM) Section	PBD Section	Comments
General Provisions		
<p>1. Reference: Page 9</p> <p><u>Scope</u></p> <p>Procurements funded partly or fully by international funding institutions (IFI) shall follow the procedures specified under the concerned IFI's guidelines. If there are no procurement guidelines provided by the IFI concerned, or if the procurement guidelines provided are silent on specific procurement procedures, the procurement processes and procedures provided in R.A. 9184 and its IRR-A must apply suppletorily.</p>	<p>Not applicable</p>	<p>a) R.A. 9184, Section 4, provides categorically that the GPRA shall apply to all types of procurement, regardless of source of funds, whether local or foreign, provided that any treaty or international or executive agreement affecting the subject matter of the GPRA to which the GOP is a signatory shall be observed. It thus begins by clearly stressing the broad applicability of the law and follows this with the exception. For this reason, it may be better to follow in the PM the same format found in the law by beginning the paragraph with a statement of the broad scope of R.A. 9184 and stating that, as an exception, those funded by IFIs shall follow the procedures specified under the concerned IFI's guidelines, because they are covered either by a treaty or an executive agreement.</p> <p>b) This would be a fitting section to mention whether the PM would also cover the provisions of the PBDs on ADB, JBIC and WB guidelines, if such decision is subsequently agreed upon.</p>

2. Reference: Page 10 and 11

Transparency

The procurement process and the implementation of procurement contracts must be transparent. Procuring entities must ensure the wide dissemination of bid opportunities and the participation of pertinent non-government organizations. Towards this end, posting in the procuring entity's website and in the Government Electronic Procurement System (G-EPS) website is for all procurements, and Observers coming from **accredited non-government organizations** will be invited to observe any or all stages of the procurement process. In addition, each procurement transaction must be properly documented and such records must be made available to proper parties.

Public Monitoring

Public monitoring of the procurement process and the implementation of awarded contracts are provided for in RA 9184, with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of the Act and its IRR-A, and that all these contracts are performed strictly according to specifications. A

Not applicable

a) IRR-A, Section 13, provides for two kinds of observers: (i) those coming from a duly recognized private group in the sector or discipline relevant to the procurement at hand; and (ii) those coming from a non-governmental organization. As such, the referenced PM Sections should not only pertain to a non-governmental organization.

b) Although IRR-A, Section 13.2, provides for criteria that would have to be met by observers, it does not provide for any accreditation requirement. It would thus be inappropriate to use the term "accredited." Instead, the terms "qualified" may be used.

system of reporting to the GPPB is provided for, while accredited non-government organizations (NGOs) are allowed to observe and monitor the procurement process and contract implementation.

Procurement Organization

3. Reference: Page 14

a. The Procuring Entity

A Procuring Entity may be the Head Office, or, when allowed to procure independently of the Head Office, the Regional Office or any decentralized, local or lower level office of an NGA, GOCC, GFI, SUC or LGU. However, the authority to procure independently of the Head Office must not be presumed. As a general rule, the procurement function shall be centralized in the Head Office, unless the Head of the Procuring Entity issues a directive delegating such authority to procure to its regional/decentralized/lower level office.

Not applicable

The use of the term “Head Office” may simply confuse the reader, as “Head of the Procuring Entity” is the term used in R.A. 9184 and its IRR-A. In this regard, under IRR-A, Section 5 (o), the term “Procuring Entity” may refer to any department , agency or office of the Government, implying that even a Regional Office or lower level office of an NGA, GOCC, GFI, SUC or LGU is covered. To state that categorically that the procurement function shall be centralized in the Head Office is misleading, because the organizational structure of a decentralized office may include a procurement unit, regardless of the existence or non-existence of any directive from the Head Office delegating authority to procure,

4. Reference: Page 15

b. The Procurement Unit / Office and the BAC Secretariat

The Head of the Procuring Entity must

Not applicable

IRR-A, Section 14.1, merely requires that the Head of the Procuring Entity shall create a permanent BAC Secretariat, not necessarily that it must create a Procurement Unit/Office. In fact, the choice is left to the Head of the Procuring

<p>create or designate an existing organic office that will serve as its Procurement Unit / Office, which will also serve as the BAC Secretariat. The purpose for the dual function of this Office is to ensure continuity as well as professionalization of the procurement function.</p>		<p>Entity as to whether to create a new office or to merely designate an existing organic office to be the BAC Secretariat. It is in the latter case that the Head may consider designating the existing Procurement Unit/Office as the BAC Secretariat, instead of any other office, as it is best equipped for the task.</p>
<p>5. Reference: Page 16</p> <p>The following guidelines shall likewise be considered by the Head of the Procuring Entity in organizing the Procurement Office / Unit:</p> <p>i. A Procuring Entity with a procurement budget exceeding THREE BILLION PESOS (₱3B), whether procurement is centralized or decentralized, must have a “Procurement and Supply Chain Management Service” which will be headed by a Director III.</p> <p>ii. A Procuring Entity with a procurement budget exceeding ONE BILLION PESOS (₱1B) but not more than THREE BILLION PESOS (₱3B) must have a “Procurement and Supply Chain Management Division”.</p> <p>iii. A Procuring Entity with a procurement budget below ONE BILLION PESOS (₱1B) must have a “Procurement and</p>	<p>Not applicable</p>	<p>These are mere suggestions, and should not be presented as mandatory requirements through the use of the word “shall.” Other factors may also be considered, such as the types of procurement undertaken by an agency. In fact, an organizational restructuring may be both impractical and impossible for the agency to undertake at its level, especially if it is covered by a charter.</p>

<p>Supply Chain Management Section”.</p> <p>The following organizational set-up shall be adopted by the foregoing procurement organizations:</p>		
<p>6. Reference: Page 18 (for both Central Offices and Regional Offices)</p> <p>The Head of the Procuring Entity must designate the BAC Chairman, and may likewise designate the Vice-Chairman from the remaining regular members.</p>	<p>Not applicable</p>	<p>In IRR-A, Section 11.2.1, the Head of the Procuring Entity is required to designate both the Chairman and the Vice-Chairman of the BAC. It is therefore inaccurate to state that he simply “may likewise designate the Vice-Chairman....”</p>
<p>7. Reference: Page 21</p> <p>The IRR-A does not specify the rank of those who may be appointed as BAC members, although it mentions that the Chairman should be at least a third ranking permanent official. Considering the nature of BAC functions, the Local Chief Executive may choose to appoint officials of the local government who are holding positions of responsibility.</p>	<p>Not applicable</p>	<p>In GPPB Resolution No. 01-2004, dated March 10, 2004, for purposes of determining the rank in provinces, cities and municipalities, the first ranking permanent official shall be the governor or mayor, as the case may be; the second ranking permanent official shall be the vice-governor or vice-mayor, as the case may be; and the third ranking permanent official shall be the head of any of the regular offices under the Office of the Local Chief Executive: <i>Provided, however</i>, That the vice-mayor shall not be designated as member of the BAC as its office is not one of the regular offices under the Office of the Local Chief Executive.</p>
<p>8. Reference: Page 22</p> <p>d. For Barangays:</p>	<p>Not applicable</p>	<p>In GPPB Resolution No. 01-2004, dated March 10, 2004, the BAC shall be composed of at least five (5), but not more</p>

<p>i. The Barangay Chairman shall designate at least five (5) but not more than seven (7) members of the BAC, from among the members of the Sangguniang Barangay. The designated BAC members shall elect among themselves the Chairman and Vice-Chairman.</p> <p>The BAC members shall be appointed for a term of one (1) year only, reckoned from the date of appointment. However, the Barangay Chairman may renew such appointment at his discretion.</p>		<p>than seven (7) regular members of the Sangguniang Barangay, except the Punong Barangay. The Punong Barangay, being the Local Chief Executive, shall designate the members of the BAC.</p>
<p>9. Reference: Page 26</p> <p>In cases where the Head of the Procuring Entity is required to approve specific contracts, he shall ensure that the same are approved within the time frame indicated in the IRR-A, that is, within 20 calendar days from receipt of the transmittal to his office. Otherwise, such contracts, if not acted upon within the reglementary period, shall be deemed approved.</p>	<p>Not applicable</p>	<p>In IRR-A, Section 37.4, in the case of GOCCs, the concerned board, or its duly authorized representative, shall act on the approval of the contract within thirty (30) calendar days from receipt thereof together with all documentary requirements to perfect the said contract.</p>
<p>10. Reference: Page 27</p> <p>b. Responsibilities of the Procurement Unit/Office and the BAC Secretariat. The Procurement Unit/Office of each Procuring Entity shall have the</p>	<p>Not applicable</p>	<p>In addition to the responsibilities listed in IRR-A, Section 14.1, The BAC Secretariat should also be considered as the central depository of all procurement related information, and must continually update itself with the most current GPPB</p>

<p>following responsibilities:</p> <p>i. It shall act as the BAC Secretariat. As such, it shall have the following responsibilities:</p>		<p>resolutions, issuances, circulars and events, and downstream the same to all relevant officers, employees or parties requiring information. For this purpose, all information released by the GPPB can be secured electronically from www.gppb.gov.ph.</p>
<p>11. Reference: Pages 27-30</p> <p>The meaning of the term “Jury Duty,” as used in the responsibilities of the BAC Secretariat, BAC and TWG.</p>	<p>Not applicable</p>	<p>This is not used in R.A. 9184 and its IRR-A. It was, however, used in E.O. 40, to mean that the procurement officers concerned would have to commit to the bidding/procurement at hand by giving utmost priority to it over all other duties and responsibilities, until completion. As such, considering that this description is already provided in R.A. 9184, its IRR-A and in the referenced sections of the PM, there may be no need to revert to the term “Jury Duty,” as it is ambiguous and inapplicable under the Philippines’ legal system.</p>
<p>12. Reference: Page 31</p> <p>The report shall be submitted to the Head of the Procuring Entity, and a copy thereof will be furnished the BAC Chairman, who shall forward it to the BAC Secretariat for inclusion in the procurement documents that will be submitted to the proper authorities for approval. This will be part of the official record of the bidding, and part of the audit trail. The Observer may</p>	<p>Not applicable</p>	<p>Item No. ii in the referenced section really pertains to any instance where the award would not redound to the benefit of the Government, whether due to external circumstances or by reason of manifest partiality or inexcusable lapses on the part of the public officer or employee concerned. As such, the reference made to Section 41.1 (c) of IRR-A, which only pertains to situations beyond the control of the Procuring Entity, would only serve</p>

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also give a copy of the Report to the Office of the Ombudsman or the Resident Ombudsman and the COA Auditor of the Procuring Entity in any of the following instances:

- i. when the BAC has failed to follow the prescribed bidding procedures; or
- ii. for any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as defined in Section 41.1 (c) of the IRR-A of RA 9184.

to limit the applicability and purpose of the Observer's report. In fact, the report was meant more for the purpose of identifying corrupt or inequitable behavior on the part of the officers and employees of the Procuring Entity, as well as procedural or substantive lapses, than anything else – a point that is made obvious by the earlier reference to the Office of the Ombudsman and COA Auditor.

Procurement Planning

13. Reference: Page 37

Planning is the “act or process of making or carrying out plans; specifically: the establishment of goals, policies, and procedures for a social or economic unit”. (Merriam-Webster’s Collegiate Dictionary, 2001) Plans could be short-term, medium-term or long-term periods. They could be small-scale or large-scale. But in all cases, a plan involves resource allocation and scheduling. This is particularly true for procurement planning, which is a critical component of a Procuring Entity’s budget.

Not applicable

The referenced section is too simplistic. The importance of planning cannot be over-emphasized. Add the following after the last sentence:

Plans ensure that the overall goal of the particular project will be achieved effectively and efficiently. Through plans, a procuring entity is able to effectively manage and track procurement all the way to contract performance. As such, it allows managers to determine how to allocate limited cash and other appropriate resources under a given time line and identify choke-points, weaknesses and delays in the entire

		activity that can be addressed or eliminated.
<p>14. Reference: Page 40</p> <p>c. The description should be generic and flexible, not product-specific or seemingly tailored for a particular brand, product, contractor or consultant, unless the procurement involves products or services that have intellectual property rights attached to it, or are exclusively offered by a single source, and the substitute product or service is not satisfactory.</p>	<p>Not applicable</p>	<p>If the procurement involves products or services that have intellectual property rights attached, or are exclusively offered by a single source without any suitable substitute, then the PMO or end-user unit must be able to satisfactorily justify the need for such a product or service.</p>
<p>15. Reference: Page 43</p> <p>In preparing the PPMP, the BAC shall take into consideration the following factors:</p> <p>a. The APP should include all procurement activities planned for the year. The approved APP shall be the basis for the Procuring Entity's procurement, and only those projects / procurement included therein shall be undertaken.</p> <p>b. The APP shall include only those procurements that are considered crucial to the efficient discharge of governmental functions. The IRR-A considers a procurement crucial to the efficient</p>	<p>Not applicable</p>	<p>The referenced section pertains to the APP, not the PPMP.</p>

discharge of governmental functions if:		
<p>16. Reference: Page 44</p> <p>In determining the nature of a project with goods, civil works and consulting components, or any combination of the three, the purpose of the procurement shall govern. In the example given, it seems that the purpose is actually to computerize the internal operations of the Procuring Entity, hence the single most important component of the project is the design and development of information systems. This being the case, the project could be bid out as a consulting service.</p>	Not applicable	<p>In IRR-A, Section 5 (p), in case of projects involving mixed procurements, the nature of the procurement, <i>i.e.</i> goods, infrastructure projects or consulting services, shall be determined based on the primary purpose of the project. This is helpful in determining which type of procurement procedure to apply. However, there may be instances when the PMO, end-user unit or the Procuring Entity itself may have difficulty determining or agreeing upon the primary purpose. In these cases, ascertaining the component with the highest price may be useful as an indicator of purpose, though not necessarily as a determining factor.</p>
General Procurement Activities and Timelines: Goods		
<p>17. Reference: Page 49</p> <p>It is also assumed that, when necessary, the pre-procurement conference has been conducted at least 7 days prior to the 1st advertisement of the IAEB in the newspaper.</p>	Not applicable	<p>IRR-A, Section 20, does not require any timeframe for the holding of the pre-procurement conference. As such, it is not advisable to provide in the PM for a mandatory timeframe of at least 7 days prior to the 1st advertisement. On a practical note, it may be advisable to give the agency leeway for this activity, as it is not considered part of the bidding timeline. Moreover, providing for a fixed period may influence the BAC to require the immediate newspaper publication of a bidding activity for mere compliance purposes, despite a finding being made</p>

		during the pre-procurement conference about the need for more preparation therefor.
<p>19. Reference: Page 50</p> <p>3a. Calls a Pre-bid Conference. IRR-A Sec. 22.2 states that: <i>“The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.”</i> Since the latest possible deadline for the submission and receipt of bids is Day 44, (see 4a. Submits Eligibility, Technical and Financial Envelopes) the latest possible time shall then be Day 32.</p>	<p>ITB, Clause 10</p> <p>No conflict</p>	<p>It should be noted that the deadline for the submission and receipt of bids is the same as the date of opening of bids.</p>
<p>20. Reference: Page 50</p> <p>It is assumed that the earliest possible time to call a pre-bid conference is assumed to be seven (7) calendar days after the earliest possible 2nd advertisement of the IAEB. Since the earliest possible time to publish the 2nd advertisement is Day 8, this pegs the earliest date for the Pre-bid Conference to Day 15. Take note that the assumption for the earliest possible time is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders ample time to study the bidding documents prior to the pre-bid conference, which also reflects the</p>	<p>ITB, Clause 10</p> <p>No conflict</p>	<p>a) The assumption provided in the referenced section is not valid, because this is not an assumption created by the law, nor would it be found during the minutes of the congressional debates. However, the observation that ample time should be given to the bidders to study the bidding documents is legitimate, because bidders need to review the requirements for the bidding so as to be able to provide substantive comments and questions during the pre-bid conference. This is especially true for complex projects. As such, instead of using the word “assumption,” it may be better to use the term “suggested.”</p>

<p>legislative intent behind IRR-A Sec. 22.2.</p> <p>3b. Makes Available Copies of Minutes of the Pre-bid Conference. IRR-A Sec. 22.3 states that: <i>“The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference.”</i> Thus, the earliest and latest possible availability of the copies of the minutes is Day 18 and Day 35 respectively.</p>		<p>b) Since the maximum period for the availability of the Minutes of the Pre-Bid Conference is three (3) calendar days, the BAC may actually issue it immediately after the meeting on the same day. Thus, the earliest possible time for this activity should be Day 15.</p>
<p>21. Reference: Page 50</p> <p>4a. Submits Eligibility, Technical and Financial Envelopes. IRR-A Sec. 21.2.2 i states that: <i>“For goods, a maximum period of thirty (30) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to opening of bids.”</i></p> <p>Since the last day for (2nd) advertisement and/or posting of the IAEB is Day 14 and the maximum period is 30 calendar days, the latest possible submission shall then be Day 44.</p> <p>With regard to the earliest possible time, nothing in the law or IRR-A of R.A. 9184 prohibits the bidders from submitting their</p>	<p>ITB, Clause 13.3</p> <p>If a Bidder has previously secured a Certification from the Procuring Entity to the effect that it has previously submitted the above-enumerated Class “A” Eligibility Documents, the said Certification may be submitted in lieu of the said Eligibility Documents.</p>	<p>IRR-A, Section 23.6, allows the BAC to maintain a file of the Class “A” Eligibility Documents. When such file is required, a manufacturer, supplier or distributor may simply maintain a current file of these documents at least once a year or more frequently when needed. This means that, with respect to Class “A” Eligibility Documents,” these may be submitted to the Procuring Entity even before any bidding activity – thus even before Day 1.</p>

<p>Eligibility Envelopes to the BAC immediately after the IAEB is first advertised. Thus, the earliest possible time for this activity is Day 1.</p>		
<p>22. Reference: Page 51</p> <p>4b. Receives and Opens Eligibility, Technical and Financial Envelopes. IRR-A Sec. 22.2 states that:</p> <p><i>“The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.”</i> This implies that, if the earliest possible time to hold a pre-bid conference is Day 15, (see 3a. Calls a Pre-Bid Conference) the earliest possible receipt [and opening] of the bids is 12 calendar days after that, which is Day 27.</p>	<p>Not applicable</p>	<p>Once again, it should be stated that Day 15 is only suggested as the earliest possible time to hold a pre-bid conference.</p>
<p>23. Reference: Page 51</p> <p>6. Conducts Post-Qualification and Determines LCRB. IRR-A Sec. 34.1 states that: <i>“Within seven (7) calendar days from the determination of the Lowest Calculated Bid, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated and Responsive Bid”</i>. Since the latest possible time for the determination of the LCB is Day 59, the latest possible time to conduct post-qualification and determine</p>	<p>ITB, Clause 35.1</p> <p>In post-qualification, the Procuring Entity shall determine to its satisfaction whether the bidder with the Lowest Calculated Bid shall be considered and declared as bidder with the Lowest Calculated and Responsive Bid.</p>	<p>a) The quotation of the cited IRR-A, Section 34.1, is wrong, because the last portion should read “bidder with the Lowest Calculated Bid,” instead of “bidder with the Lowest Calculated and Responsive Bid.”</p> <p>b) It should be noted that in IRR-A, Section 34.1, in exceptional cases, the seven (7) calendar day period may be extended by the GPPB.</p>

<p>LCRB is Day 66.</p> <p>One (1) calendar day after the earliest possible time for the determination of the LCB is assumed for the earliest possible time of these activities, which pegs it to Day 29.</p>		
<p>24. Reference: Pages 51-52</p> <p>7c. Accepts the Notice of Award. The earliest possible date for acceptance of notice of award is the same as the earliest possible approval of recommendation and issuance of notice of award, which is Day 30. The latest possible date for this activity is the same as the latest possible date for approval of recommendation and issuance of notice of award, which is Day 81 or Day 96, as the case may be.</p> <p>8a. BAC Finalizes the Contract with the Assistance of the TWG. The earliest possible date for finalizing the contract is the same as the earliest possible acceptance of notice of award, which is Day 30. The latest possible date for this activity is the same as the latest possible date for acceptance of notice of award, which is Day 81 or Day 96, as the case may be.</p> <p>8b. Bidder with LCRB Posts</p>	<p>ITB, Clause 40</p> <p>Within ten (10) calendar days from receipt of the Notice of Award, the successful bidder shall sign and date the contract and return it to the Procuring Entity.</p>	<p>a) In IRR-A, Section 37.3, the winning bidder or its duly authorized representative shall formally enter into contract with the Procuring Entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.</p> <p>Both ITB Clause 40 and IRR-A Section 37.3 do not provide for a step whereby the bidder accepts the Notice of Award. The reason for this is that, in the Law on Obligations and Contracts, the Notice of Award itself serves as the acceptance of the bidder's offer which is found in his bid. As such, subject to certain formal requirements such as the issuance of the CAF, once the Procuring Entity issues the Notice of the Award and the same is received by the winning bidder, there is nothing left for the latter to accept, because the Notice of Award is the acceptance. See <u>Brigido R. Valencia v.</u></p>

Performance Security and Signs Contract. IRR-A Sec. 37.3 states that: *“The winning bidder or its duly authorized representative shall formally enter into contract with the procuring entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.”* Since the latest possible dates for acceptance of notice of award is Day 81 or Day 96, in the case of GOCCs and GFIs, the latest possible time for the contract signing is **Day 91** or **Day 106**, as the case may be.

One (1) calendar day after the earliest possible time for the contract to be finalized is assumed for the earliest possible time of this activity, which is pegged at **Day 31**.

Rehabilitation Finance Corporation, G.R. No. L-10749 (April 26, 1958); Central Bank of the Philippines v. Court of Appeals and Ablaza Construction and Finance Corporation, G.R. No. L-33022 (April 22, 1975); and COMELEC v. Photokina Marketing Corporation, G.R. No. 151992 (September 18, 2002).

b) Corollary to the above, the latest possible time for finalizing the contract should not be the latest possible time for acceptance of notice of award, but rather the latest possible date for the signing of the contract – which is Day 91, or Day 106 in the case of GOCCs and GFIs.

c) The latest possible time for contract signing should not be based upon the latest possible time for acceptance of Notice of Award, but rather to what is provided by law – that is, ten (10) days from receipt by the winning bidder of the Notice of Award. Note here that the date of issuance may not necessarily be the date of receipt by the winning bidder. At any rate, if we were to assume that the winning bidder received the Notice of Award on the same date that it was issued, then the latest possible time for contract signing will still be Day 91 or Day 106 in the case of GOCCs and GFIs.

<p>25. Reference: Page 52</p> <p>8c. Head of the Procuring Entity or Contract Signatory Signs the Contract Immediately after Receiving Performance Security. The earliest possible date for the Head of the Procuring Entity to sign the contract is the same as the earliest possible time for the bidder with LCRB to sign the same, which is Day 31.</p> <p>The latest possible date for this activity is the same as the latest possible date for the bidder with LCRB to sign the contract, which is Day 91 or Day 106, as the case may be.</p>	<p>Not applicable</p>	<p>It is wrong to say that the Head of the Procuring Entity or Contract Signatory signs the contract immediately after receiving the performance security, because the latter is simply an accessory of the former and, as such, cannot be a condition precedent to a contract. See <u>Brigido R. Valencia v. Rehabilitation Finance Corporation</u>, G.R. No. L-10749 (April 26, 1958).</p>
<p>26. Reference: Page 52</p> <p>8e. Issues Notice to Proceed. IRR-A Sec. 37.5 states that: <i>“The concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority.”</i> Since the latest possible times for the approval of the contract is Day 91 if further approval is not required, for NGAs; Day 106 if further approval is not required, for</p>	<p>ITB, Clause 42</p> <p>Within seven (7) calendar days from the date of approval of the Contract by the appropriate approving authority, the Procuring Entity shall issue its Notice to Proceed to the successful supplier.</p>	<p>The earliest possible time for the issuance of the Notice to Proceed should be the same as the earliest possible time for the contract to be signed by both parties, because the former may be issued immediately after the latter but within the same day – thus, Day 31. However, if further approval is required, then the earliest possible time for this activity would have to be the same as the earliest possible time for the approval of contract, because, the issuance of the Notice to Proceed may actually be issued together with or immediately after contract approval – thus, Day 32.</p>

GOCCs; Day 111 if further approval is required, for NGAs; or Day 136 if further approval is required, for GOCCs; the latest issuance of the notice to proceed is pegged at **Day 98, Day 113, Day 118** or **Day 143**, as the case may be.

For the earliest possible time of this activity, one (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it to **Day 32**. Take note that this becomes step "8d" when approval of higher authority is not required.

General Procurement Activities and Timelines: Works

27. Reference: Page 53

It is also assumed that, when necessary, the pre-procurement conference has been conducted **at least 7 days prior** to the 1st advertisement of the IAEB in the newspaper.

Not applicable

IRR-A, Section 20, does not require any timeframe for the holding of the pre-procurement conference. As such, it is not advisable to provide in the PM for a mandatory timeframe of at least 7 days prior to the 1st advertisement. On a practical note, it may be advisable to give the agency leeway for this activity, as it is not considered part of the bidding timeline. Moreover, providing for a fixed period may influence the BAC to require the immediate newspaper publication of a bidding activity for mere compliance purposes, despite a finding being made during the pre-procurement conference about the need for more preparation

<p>28. Reference: Page 54</p> <p>2d. Submits Eligibility Envelopes. Nothing in the law or IRR-A of R.A. 9184 prohibits the bidders from submitting their Eligibility Envelopes to the BAC immediately after the eligibility forms are issued. Thus, the earliest possible time for this activity is immediately after the earliest possible issuance of eligibility forms, which is Day 1.</p> <p>IRR-A Sec. 23.1 states: <i>“The eligibility envelopes of prospective bidders for the procurement of infrastructure projects shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid.”</i> The latest possible submission is assumed to be seven (7) calendar days from the latest possible deadline of receipt of LOI and Application for Eligibility. This pegs the latest possible submission at Day 28. The basis for the earliest and latest possible submission of eligibility envelopes is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders who submitted their LOIs at the last possible moment ample time to prepare their eligibility requirements.</p>	<p>Eligibility Documents, Clause 2.1</p> <p>No conflict</p> <p>Eligibility Documents, Clause 2.5</p> <p>If a Bidder has previously secured a Certification from the Procuring Entity to the effect that it has previously submitted the above-enumerated Class “A” Eligibility Documents, the said Certification may be submitted in lieu of the said Eligibility Documents.</p> <p>Eligibility Documents, Clause 5.1</p> <p>Eligibility Documents must be received by the Procuring Entity’s BAC at the address and on or before the date and time indicated in the IAEB and the Eligibility Data Sheet.</p>	<p>therefor.</p> <p>a) IRR-A, Section 23.6, allows the BAC to maintain a file of the Class “A” Eligibility Documents. When such file is required, a manufacturer, supplier or distributor may simply maintain a current file of these documents at least once a year or more frequently when needed. This means that, with respect to Class “A” Eligibility Documents,” these may be submitted to the Procuring Entity even before any bidding activity – thus even before Day 1.</p> <p>b) The assumed seven (7) calendar days provided for the submission of Eligibility Envelopes appears to be legitimate, because a longer period would have the effect of extending the period for the issuance of bidding documents beyond the deadline of thirty (30) calendar days after the last day of advertising/posting the IAEB. However, it should be noted that although separate Sections of IRR-A deal with the submission of the LOI and the submission of the Eligibility Envelope – 21.3 and 23.1, respectively – a careful reading of Section 21.3 would reveal that, unless the contractor had previously submitted its eligibility requirements, the law allows the Procuring Entity to require the LOI to be submitted together with the Eligibility Documents.</p>
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<p>29. Reference: Page 54</p> <p>2e. Opens Eligibility Envelopes / Conducts Eligibility Check. IRR-A Sec. 23.10 states that <i>“The entire process of eligibility check for the procurement of infrastructure projects shall not exceed fifteen (15) calendar days.”</i> Since the latest possible submission of eligibility envelopes is pegged at Day 28, therefore the latest possible time to complete this activity is pegged at Day 43.</p> <p>The earliest possible time for these activities is assumed to be seven (7) calendar days after the earliest possible deadline of receipt of LOI and Application for Eligibility, which pegs the earliest possible time for these activities at Day 22. This is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders who submitted their LOIs at the last possible moment ample time to prepare their eligibility requirements.</p>	<p>Eligibility Documents, Clause 2.1</p> <p>* * * [T]hese Eligibility Envelopes of prospective bidders shall be submitted on or before the date of the Eligibility Check specified in the IAEB for purposes of determining eligibility of prospective bidders.</p> <p>Eligibility Documents, Clause 8.1</p> <p>The Procuring Entity’s BAC will open the envelopes containing the Eligibility Documents in the presence of the prospective bidders’ representatives who choose to attend, at the time, on the date, and at the place specified in the IAEB. The prospective bidders’ representatives who are present shall sign a register evidencing their attendance.</p>	<p>The earliest possible time for the conduct of the Eligibility Check should not be seven (7) calendar days after deadline for submission of LOI, but merely one day. Upon receipt of the Eligibility Envelope, the preference of the law is for the BAC to immediately conduct the Eligibility Check – an intent borne by the use of the non-discretionary “pass/fail” criteria and the requirement for the opening in the presence of the prospective bidders’ representatives. In fact, Eligibility Documents, Clause 2.1, itself provides that the submission of the Eligibility Envelopes shall be submitted before or on the date of the Eligibility Check. As such, it is suggested that the earliest possible time for the conduct of the Eligibility Check be the earliest possible deadline for the receipt of the LOI, because the prospective bidder may be allowed to submit its Eligibility Envelope together with its LOI. Thus, Day 15.</p>
<p>30. Reference: Page 54</p> <p>3a. Issue Bidding Documents. IRR-A Sec. 23.1 states that: <i>“The eligibility envelopes of prospective bidders <u>for the procurement of infrastructure projects shall be submitted on or before the</u></i></p>	<p>Not applicable</p>	<p>For the above reason, the earliest possible time for the issuance of the bidding documents should not be Day 24, but Day 15.</p>

<p><i>deadline specified in the Invitation to Apply for Eligibility and to Bid, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the procuring entity.</i></p> <p>This implies that the bidding documents shall be issued only after determination of eligibility of prospective bidders. Therefore, the earliest possible time for this activity is immediately after the earliest possible notification of eligible bidders, which is Day 24.</p> <p>With regard to the latest possible issuance, IRR-A Sec. 21.2.2 ii states that: <i>“For infrastructure projects, the bidding documents shall be issued within thirty (30) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid.”</i> Since the last day for (2nd) advertisement and/or posting of the IAEB is Day 14, the latest possible issuance shall then be Day 44.</p>		
<p>31. Reference: Page 55</p> <p>4a. Calls a Pre-bid Conference. IRR-A Sec. 22.2 states that: <i>“The pre-bid conference shall be held at least twelve</i></p>	<p>ITB, Clause 5</p> <p>No conflict</p>	<p>a) It should be noted that the deadline for the submission and receipt of bids is the same as the date of opening of bids.</p> <p>b) The assumption provided in the</p>

<p><i>(12) calendar days before the deadline for the submission and receipt of bids.” Since the latest possible deadline for the submission and receipt of bids is Day 44, (see 5a. Submits Eligibility, Technical and Financial Envelopes) the latest possible time shall then be Day 62.</i></p> <p>It is assumed that the earliest possible time to call a pre-bid conference is seven (7) calendar days after the earliest possible determination and notification of eligible bidders (Day 22). This pegs the earliest date for the Pre-bid to Day 29. Take note that the assumption for the earliest possible time is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders ample time to study the bidding documents prior to the pre-bid conference, which also reflects the legislative intent behind IRR-A Sec. 22.2.</p>		<p>referenced section is not valid, because this is not an assumption created by the law, nor would it be found during the minutes of the congressional debates. However, the observation that ample time should be given to the bidders to study the bidding documents is legitimate, because bidders need to review the requirements for the bidding so as to be able to provide substantive comments and questions during the pre-bid conference. This is especially true for complex projects. As such, instead of using the word “assumption,” it may be better to use the term “suggested.”</p>
<p>32. Reference: Page 55</p> <p>4b. Makes Available Copies of Minutes of the Pre-bid Conference. IRR-A Sec. 22.3 states that: <i>“The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference.”</i> Thus, the earliest and latest possible availability of the copies of</p>	<p>ITB, Clause 5</p> <p>No conflict</p>	<p>Since the maximum period for the availability of the Minutes of the Pre-Bid Conference is three (3) calendar days, the BAC may actually issue it immediately after the meeting on the same day. Thus, the earliest possible time for this activity should be Day 29.</p>

<p>the minutes are Day 32 and Day 65, respectively.</p>		
<p>33. Reference: Page 55</p> <p>4c. BAC Issues Supplemental / Bid Bulletin. IRR-A Sec. 22.5.1 states that: “The BAC shall respond to the said request by issuing a Supplemental/ Bid Bulletin, duly signed by the BAC chairman, to be made available to all those who have properly secured the bidding documents from the procuring entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids.” Similarly, IRR-A Sec. 22.5.2 states that: “Supplemental/Bid Bulletins may be issued upon the procuring entity’s initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids.” Since the latest possible deadline for the submission and receipt of bids is Day 74, (see 5a. Submits Technical and Financial Envelopes) the latest possible issuance shall then be Day 67.</p> <p>For the earliest possible time, it is possible for the BAC to issue Supplemental/Bid Bulletins at their own initiative immediately after the Bidding</p>	<p>ITB, Clause 7</p> <p>No conflict</p>	<p>The earliest possible time to issue a Supplemental/Bid Bulletin is not at Day 2, but on Day 16, because Day 15 is the earliest possible time for the BAC to issue the Bidding Documents.</p>

<p>Documents are issued. Thus, one (1) calendar day after the earliest possible issuance of the Bidding Documents is assumed for the earliest possible issuance of the Supplemental/Bid Bulletin to take into account the preparation of the Supplemental/ Bid Bulletin and approval by the BAC Chairman. This pegs the earliest possible issuance of the Supplemental/Bid Bulletin to Day 2.</p>		
<p>34. Reference: Page 56</p> <p>7. Conducts Post-Qualification and Determines LCRB. IRR-A Sec. 34.1 states that: <i>“Within seven (7) calendar days from the determination of the Lowest Calculated Bid, the BAC shall conduct and accomplish a post-qualification of the bidder with the Lowest Calculated and Responsive Bid”</i>. Since the latest possible time for the determination of the LCB is Day 59, the latest possible time to conduct post-qualification and determine LCRB is Day 96.</p> <p>One (1) calendar day after the earliest possible time for the determination of the LCB is assumed for the earliest possible time of these activities, which pegs it to Day 42.</p>	<p>ITB, Clause 25.1</p> <p>In post-qualification, the Procuring Entity shall determine to its satisfaction whether the bidder with the Lowest Calculated Bid shall be considered and declared as bidder with the Lowest Calculated and Responsive Bid.</p>	<p>a) The quotation of the cited IRR-A, Section 34.1, is wrong, because the last portion should read “bidder with the Lowest Calculated Bid,” instead of “bidder with the Lowest Calculated and Responsive Bid.”</p> <p>b) It should be noted that in IRR-A, Section 34.1, in exceptional cases, the seven (7) calendar day period may be extended by the GPPB.</p>
<p>35. Reference: Page 57</p>	<p>ITB, Clause 29.1</p>	<p>a) In IRR-A, Section 37.3, the winning bidder or its duly authorized</p>

8c. Accepts the Notice of Award. The earliest possible date for acceptance of notice of award is the same as the earliest possible approval of recommendation and issuance of notice of award, which is **Day 43**.

The latest possible date for this activity is the same as the latest possible date for approval of recommendation and issuance of notice of award, which is **Day 111** or **Day 126**, as the case may be.

9a. BAC Finalizes the Contract with the Assistance of the TWG. The earliest possible date for finalizing the contract is the same as the earliest possible acceptance of notice of award, which is **Day 30**.

The latest possible date for this activity is the same as the latest possible date for acceptance of notice of award, which is **Day 111** or **Day 126**, as the case may be.

9b. Bidder with LCRB Posts Performance Security and Signs Contract. IRR-A Sec. 37.3 states that: *“The winning bidder or its duly authorized representative shall formally enter into contract with the procuring entity concerned, and submit all documentary*

Within ten (10) calendar days from receipt of the Notice of Award, the successful bidder shall sign and date the contract and submit it to the Procuring Entity.

representative shall formally enter into contract with the Procuring Entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

Both ITB Clause 29.1 and IRR-A Section 37.3 do not provide for a step whereby the bidder accepts the Notice of Award. The reason for this is that, in the Law on Obligations and Contracts, the Notice of Award itself serves as the acceptance of the bidder’s offer which is found in his bid. As such, subject to certain formal requirements such as the issuance of the CAF, once the Procuring Entity issues the Notice of the Award and the same is received by the winning bidder, there is nothing left for the latter to accept, because the Notice of Award is the acceptance. See Brigido R. Valencia v. Rehabilitation Finance Corporation, G.R. No. L-10749 (April 26, 1958); Central Bank of the Philippines v. Court of Appeals and Ablaza Construction and Finance Corporation, G.R. No. L-33022 (April 22, 1975); and COMELEC v. Photokina Marketing Corporation, G.R. No. 151992 (September 18, 2002).

<p><i>requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.”</i> Since the latest possible dates for acceptance of notice of award is Day 81 or Day 96, in the case of GOCCs and GFIs, the latest possible time for the contract signing is Day 91 or Day 106, as the case may be.</p> <p>One (1) calendar day after the earliest possible time for the contract to be finalized is assumed for the earliest possible time of this activity, which is pegged at Day 31.</p>		<p>b) Corollary to the above, the latest possible time for finalizing the contract should not be the latest possible time for acceptance of notice of award, but rather the latest possible date for the signing of the contract – which is Day 121, or Day 136 in the case of GOCCs and GFIs.</p> <p>c) The latest possible time for contract signing should not be based upon the latest possible time for acceptance of Notice of Award, but rather to what is provided by law – that is, ten (10) days from receipt by the winning bidder of the Notice of Award. Note here that the date of issuance may not necessarily be the date of receipt by the winning bidder. At any rate, if we were to assume that the winning bidder received the Notice of Award on the same date that it was issued, then the latest possible time for contract signing will still be Day 121 or Day 136 in the case of GOCCs and GFIs.</p>
<p>36. Reference: Page 57</p> <p>9c. Head of the Procuring Entity or Contract Signatory Signs the Contract Immediately after Receiving Performance Security. The earliest possible date for the Head of the Procuring Entity to sign the contract is the same as the earliest possible time for the</p>	<p>ITB, Clause 29.2</p> <p>Within twenty (20) calendar days upon receipt from the successful Bidder of the signed confirmation of the Award, the signed contract, the required Performance security and all other documentary requirements, the Procuring Entity shall sign and approve the contract.</p>	<p>a) It is wrong to say that the Head of the Procuring Entity or Contract Signatory signs the contract immediately after receiving the performance security, because the latter is simply an accessory of the former and, as such, cannot be a condition precedent to a contract. See <u>Brigido R. Valencia v. Rehabilitation Finance Corporation</u>, G.R. No. L-10749</p>

<p>bidder with LCRB to sign the same, which is Day 44.</p> <p>The latest possible date for this activity is the same as the latest possible date for the bidder with LCRB to sign the contract, which is Day 121 or Day 136, as the case may be.</p>		<p>(April 26, 1958).</p> <p>2) Note also that there is no legal basis for ITB, Clause 29.2. In fact, it goes against the established jurisprudence cited above.</p>
<p>37. Reference: Page 58</p> <p>9e. Issues Notice to Proceed. IRR-A Sec. 37.5 states that: <i>“The concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority.”</i> Since the latest possible times for the approval of the contract is Day 91 if further approval is not required, for NGAs; Day 106 if further approval is not required, for GOCCs; Day 111 if further approval is required, for NGAs; or Day 136 if further approval is required, for GOCCs; the latest issuance of the notice to proceed is pegged at Day 128, Day 143, Day 148 or Day 173, as the case may be.</p> <p>For the earliest possible time of this activity, one (1) calendar day after the</p>	<p>ITB, Clause 31</p> <p>Within seven (7) calendar days from the date of approval of the Contract by the appropriate approving authority, the Procuring Entity shall issue its Notice to Proceed.</p>	<p>The earliest possible time for the issuance of the Notice to Proceed should be the same as the earliest possible time for the contract to be signed by both parties, because the former may be issued immediately after the latter but within the same day – thus, Day 44. However, if further approval is required, then the earliest possible time for this activity would have to be the same as the earliest possible time for the approval of contract, because, the issuance of the Notice to Proceed may actually be issued together with or immediately after contract approval – thus, Day 45.</p>

<p>earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it to Day 45. Take note that this becomes step "9d" when approval of higher authority is not required.</p>		
<p>General Procurement Activities and Timelines: Consulting Services (Quality Based Evaluation)</p>		
<p>38. Reference: Page 59</p> <p>It is also assumed that, when necessary, the pre-procurement conference has been conducted at least 7 days prior to the 1st advertisement of the IAEB in the newspaper.</p>	<p>Not applicable</p>	<p>IRR-A, Section 20, does not require any timeframe for the holding of the pre-procurement conference. As such, it is not advisable to provide in the PM for a mandatory timeframe of at least 7 days prior to the 1st advertisement. On a practical note, it may be advisable to give the agency leeway for this activity, as it is not considered part of the bidding timeline. Moreover, providing for a fixed period may influence the BAC to require the immediate newspaper publication of a bidding activity for mere compliance purposes, despite a finding being made during the pre-procurement conference about the need for more preparation therefor.</p>
<p>39. Reference: Page 60</p> <p>2d. Submits Eligibility Envelopes. Nothing in the law or IRR-A of R.A. 9184 prohibits the bidders from submitting their Eligibility Envelopes to the BAC immediately after the eligibility forms are issued. Thus, the earliest possible time for</p>	<p>Eligibility Documents, Clause 2.1</p> <p>No conflict</p> <p>Eligibility Documents, Clause 2.5</p> <p>If a Bidder has previously secured a Certification from the Procuring Entity to</p>	<p>a) IRR-A, Section 24.7, allows the BAC to maintain a file of the Class "A" Eligibility Documents. When such file is required, a manufacturer, supplier or distributor may simply maintain a current file of these documents at least once a year or more frequently when needed. This means that, with respect to Class "A" Eligibility</p>

<p>this activity is immediately after the earliest possible issuance of eligibility forms, which is Day 1.</p> <p>The latest possible submission is assumed to be seven (7) calendar days from the latest possible deadline of receipt of LOI and Application for Eligibility. This pegs the latest possible submission at Day 28. The basis for the earliest and latest possible submission of eligibility envelopes is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders who submitted their LOIs at the last possible moment ample time to prepare their eligibility requirements.</p>	<p>the effect that it has previously submitted the above-enumerated Class “A” Eligibility Documents, the said Certification may be submitted in lieu of the said Eligibility Documents.</p> <p>Eligibility Documents, Clause 5.1</p> <p>Eligibility Documents must be received by the Procuring Entity’s BAC at the address and on or before the date and time indicated in the IAEB and the Eligibility Data Sheet.</p>	<p>Documents,” these may be submitted to the Procuring Entity even before any bidding activity – thus even before Day 1.</p> <p>b) The assumed seven (7) calendar days provided for the submission of Eligibility Envelopes appears to be legitimate, because a longer period would have the effect of extending the period for the issuance of bidding documents beyond the deadline of thirty (30) calendar days after the last day of advertising/posting the IAEB. However, it should be noted that although separate Sections of IRR-A deal with the submission of the LOI and the submission of the Eligibility Envelope – 21.3 and 24.10, respectively – a careful reading of Section 21.3 would reveal that, unless the consultant had previously submitted its eligibility requirements, the law allows the Procuring Entity to require the LOI to be submitted together with the Eligibility Documents.</p>
<p>40. Reference: Page 60</p> <p>2e. Opens Eligibility Envelopes / Conducts Eligibility Check. The earliest possible time for these activities is assumed to be seven (7) calendar days after the earliest possible deadline of receipt of LOI and Application for Eligibility, while the latest possible time is</p>	<p>Eligibility Documents, Clause 2.1</p> <p>* * * [T]hese Eligibility Envelopes of prospective bidders shall be submitted on or before the date of the Eligibility Check specified in the IAEB for purposes of determining eligibility of prospective bidders.</p>	<p>The earliest possible time for the conduct of the Eligibility Check should not be seven (7) calendar days after deadline for submission of LOI, but merely one day. Upon receipt of the Eligibility Envelope, the preference of the law is for the BAC to immediately conduct the Eligibility Check – an intent borne by the use of the non-discretionary “pass/fail” criteria and the</p>

<p>assumed to be seven (7) calendar days after the latest possible deadline of receipt of LOI and Application for Eligibility. This pegs the earliest and latest possible time for these activities at Day 22 and Day 28, respectively. This is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders who submitted their LOIs at the last possible moment ample time to prepare their eligibility requirements.</p>	<p>Eligibility Documents, Clause 8.1</p> <p>The Procuring Entity's BAC will open the envelopes containing the Eligibility Documents in the presence of the prospective bidders' representatives who choose to attend, at the time, on the date, and at the place specified in the IAEB. The prospective bidders' representatives who are present shall sign a register evidencing their attendance.</p>	<p>requirement for the opening in the presence of the prospective bidders' representatives. In fact, Eligibility Documents, Clause 2.1, itself provides that the submission of the Eligibility Envelopes shall be submitted before or on the date of the Eligibility Check. As such, it is suggested that the earliest possible time for the conduct of the Eligibility Check be the earliest possible deadline for the receipt of the LOI, because the prospective bidder may be allowed to submit its Eligibility Envelope together with its LOI. Thus, Day 15.</p>
<p>41. Reference: Page 60</p> <p>3. Determines and Notifies Shortlisted Consultants. IRR-A Sec. 24.15.4 states that: <i>"The BAC shall recommend the short list of consultants to the head of the procuring entity for consideration and approval. The entire process of eligibility check and short listing shall not exceed thirty (30) calendar days."</i> Thus, the last possible day is 30 calendar days from the latest possible eligibility check (Day 28), which falls on Day 58.</p> <p>It is assumed that the earliest possible time is 4 calendar days after the earliest possible time for opening of Eligibility envelope (Day 22). This pegs the earliest</p>	<p>Eligibility Documents, Clause 9</p> <p>No conflict</p>	<p>In determining the earliest possible time, the four (4) calendar days should be counted from Day 15, not from Day 22 – thus, Day 19.</p>

<p>possible determination and notification of shortlisted consultants to Day 26. The assumption for the earliest possible time is based on having a shortlist of three (3) consultants, which is the minimum number of shortlist allowed under IRR-A Sec. 24.15.2. Three days is allotted for shortlisting (one day per consultant) and another day is allotted for approval of the shortlist and notification of the shortlisted consultants, for a total of 4 calendar days.</p>		
<p>42. Reference: Pages 60-61</p> <p>4a. Issue Bidding Documents. IRR-A Sec. 17.5 states that: <i>“Prospective bidders shall be given ample time to examine the bidding documents and to prepare their respective bids. To provide ample time, the concerned BAC shall promptly issue the bidding documents for the contract to be bid at the time the Invitation to Apply for Eligibility and to Bid is first advertised.”</i> This means that the earliest possible issuance is Day 1.</p> <p>With regard to the latest possible issuance, IRR-A Sec. 21.2.2 iii states that: <i>“For consulting services, a maximum period of ninety (90) calendar days from the last day of the period of advertising and/or posting of the Invitation to Apply for Eligibility and to Bid up to the opening of</i></p>	<p>Not applicable</p>	<p>IRR-A, Section 24.10, provides that the eligibility envelopes of prospective bidders for procurement of consulting services shall be submitted on or before the deadline specified in the IAEB, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the Procuring Entity. For this reason, and for the reason that the short listing comes after the eligibility check to determine who may participate in the public bidding, the earliest possible day for the issuance of the bidding documents is not Day 1, but the day that the short listed consultants are determined, Day 19.</p>

<p><i>bids.</i>” Since the last day for advertisement and/or posting of the IAEB is Day 14, the latest possible issuance shall then be Day 104.</p>		
<p>43. Reference: Page 61</p> <p>5a. Calls a Pre-bid Conference. IRR-A Sec. 22.2 states that: <i>“The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids.”</i> Since the latest possible deadline for the submission and receipt of bids is Day 104, (see 6a. Submits Eligibility, Technical and Financial Envelopes) the latest possible time shall then be Day 92.</p> <p>It is assumed that the earliest possible time to call a pre-bid conference is seven (7) calendar days after the earliest possible determination and notification of shortlisted consultants (Day 26). This pegs the earliest date for the Pre-bid to Day 33. Take note that the assumption for the earliest possible time is not stated in the law or in the IRR-A, but is provided for here in this manual to give the bidders ample time to study the bidding documents prior to the pre-bid conference, which also reflects the legislative intent behind IRR-A Sec. 22.2.</p>	<p>Not applicable</p>	<p>a) It should be noted that the deadline for the submission and receipt of bids is the same as the date of opening of bids.</p> <p>b) The assumption provided in the referenced section is not valid, because this is not an assumption created by the law, nor would it be found during the minutes of the congressional debates. However, the observation that ample time should be given to the bidders to study the bidding documents is legitimate, because bidders need to review the requirements for the bidding so as to be able to provide substantive comments and questions during the pre-bid conference. This is especially true for complex projects. As such, instead of using the word “assumption,” it may be better to use the term “suggested.”</p>

<p>44. Reference: Page 61</p> <p>5b. Makes Available Copies of Minutes of the Pre-bid. IRR-A Sec. 22.3 states that: <i>“The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference.”</i> Thus, the earliest and latest possible availability of the copies of the minutes are Day 36 and Day 95, respectively.</p>	<p>Not applicable</p>	<p>Since the maximum period for the availability of the Minutes of the Pre-Bid Conference is three (3) calendar days, the BAC may actually issue it immediately after the meeting on the same day. Thus, the earliest possible time for this activity should be Day 33.</p>
<p>45. Reference: Page 61</p> <p>5c. BAC Issues Supplemental / Bid Bulletin. IRR-A Sec. 22.5.1 states that: “The BAC shall respond to the said request by issuing a Supplemental/ Bid Bulletin, duly signed by the BAC chairman, to be made available to all those who have properly secured the bidding documents from the procuring entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids.” Similarly, IRR-A Sec. 22.5.2 states that: “Supplemental/Bid Bulletins may be issued upon the procuring entity’s initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids.” Since</p>	<p>Not applicable</p>	<p>The earliest possible time to issue a Supplemental/Bid Bulletin is not at Day 2, but on Day 20, because Day 19 is the earliest possible time for the BAC to issue the Bidding Documents.</p>

<p>the latest possible deadline for the submission and receipt of bids is Day 104, (see 6a. Submits Technical and Financial Envelopes) the latest possible issuance shall then be Day 97.</p> <p>For the earliest possible time, it is possible for the BAC to issue Supplemental/Bid Bulletins at their own initiative immediately after the Bidding Documents are issued. Thus, one (1) calendar day after the earliest possible issuance of the Bidding Documents is assumed for the earliest possible issuance of the Supplemental/Bid Bulletin to take into account the preparation of the Supplemental/ Bid Bulletin and approval by the BAC Chairman. This pegs the earliest possible issuance of the Supplemental/Bid Bulletin to Day 2.</p>		
<p>46. Reference: Page 62</p> <p>7b. Drafts the BAC Resolution Recommending Award. The earliest and latest possible dates for this activity are the same as the earliest and latest possible dates for evaluation of bids and determination of HRB, which are Day 49 and Day 125, respectively.</p> <p>7c. Approves Recommendation. IRR-A Sec. 33.3.5 states that: <i>“The head of the</i></p>	<p>ITB, Clause 17.3</p> <p>The entire evaluation process, including the submission of the results thereof to the Head of the Procuring Entity for approval, shall be completed in not more than twenty-one (21) calendar days after the deadline for receipt of bids. The Head of the Procuring Entity shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation</p>	<p>In IRR-A, Sections 33.3.5 and 33.4.3, after Bid Evaluation, the next step is not approval/disapproval of Recommendation of Award, but rather approval/disapproval of the evaluation results.</p>

<p><i>procuring entity shall approve or disapprove the recommendations of the BAC within two (2) calendar days after receipt of the results of the evaluation from the BAC.” This means that, if the latest possible time for the bid evaluation is Day 125, the latest possible time for the recommendation to be approved is pegged at Day 127.</i></p> <p>One (1) calendar day after the earliest possible time for the BAC Secretariat to draft the BAC resolution recommending award is assumed for the earliest possible approval of this activity to give the Head of the Procuring Entity ample time to approve the recommendation. This pegs the earliest possible issuance of the Supplemental/Bid Bulletin to Day 50.</p>	<p>from the BAC.</p>	
<p>47. Reference: Page 63</p> <p>10c. Accepts the Notice of Award. The earliest possible date for acceptance of notice of award is the same as the earliest possible approval of recommendation and issuance of notice of award, which is Day 54.</p> <p>The latest possible date for this activity is the same as the latest possible date for approval of recommendation and issuance of notice of award, which is Day</p>	<p>ITB, Clause 26.2</p> <p>Within ten (10) calendar days from receipt of the Notice of Award, the successful consultant shall sign and date the contract and submit it to the Procuring Entity.</p>	<p>a) In IRR-A, Section 37.3, the winning bidder or its duly authorized representative shall formally enter into contract with the Procuring Entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.</p> <p>Both ITB Clause 26.2 and IRR-A Section 37.3 do not provide for a step whereby the bidder accepts the Notice of Award. The</p>

170 or Day 185, as the case may be.

11a. BAC Finalizes the Contract with the Assistance of the TWG. The earliest possible date for finalizing the contract is the same as the earliest possible acceptance of notice of award, which is **Day 54**.

The latest possible date for this activity is the same as the latest possible date for acceptance of notice of award, which is **Day 170 or Day 185**, as the case may be.

11b. Consultant with HRRB Posts Performance Security and Signs Contract. IRR-A Sec. 37.3 states that: *“The winning bidder or its duly authorized representative shall formally enter into contract with the procuring entity concerned, and submit all documentary requirements to perfect the contract, within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.”* Since the latest possible dates for acceptance of notice of award is Day 170 or Day 185, in the case of GOCCs and GFIs, the latest possible time for the contract signing is **Day 180 or Day 195**, as the case may be.

One (1) calendar day after the earliest

reason for this is that, in the Law on Obligations and Contracts, the Notice of Award itself serves as the acceptance of the bidder’s offer which is found in his bid. As such, subject to certain formal requirements such as the issuance of the CAF, once the Procuring Entity issues the Notice of the Award and the same is received by the winning bidder, there is nothing left for the latter to accept, because the Notice of Award is the acceptance. See Brigido R. Valencia v. Rehabilitation Finance Corporation, G.R. No. L-10749 (April 26, 1958); Central Bank of the Philippines v. Court of Appeals and Ablaza Construction and Finance Corporation, G.R. No. L-33022 (April 22, 1975); and COMELEC v. Photokina Marketing Corporation, G.R. No. 151992 (September 18, 2002).

b) Corollary to the above, the latest possible time for finalizing the contract should not be the latest possible time for acceptance of notice of award, but rather the latest possible date for the signing of the contract – which is Day 180, or Day 195 in the case of GOCCs and GFIs.

c) The latest possible time for contract signing should not be based upon the latest possible time for acceptance of

<p>possible time for the contract to be finalized is assumed for the earliest possible time of this activity, which is pegged at Day 55.</p>		<p>Notice of Award, but rather to what is provided by law – that is, ten (10) days from receipt by the winning bidder of the Notice of Award. Note here that the date of issuance may not necessarily be the date of receipt by the winning bidder. At any rate, if we were to assume that the winning bidder received the Notice of Award on the same date that it was issued, then the latest possible time for contract signing will still be Day 180 or Day 195 in the case of GOCCs and GFIs.</p>
<p>48. Reference: Page 63-64</p> <p>11c. Head of the Procuring Entity or Contract Signatory Signs the Contract Immediately after Receiving Performance Security. The earliest possible date for the Head of the Procuring Entity to sign the contract is the same as the earliest possible time for the Consultant with HRRB to sign the same, which is Day 55.</p> <p>The latest possible date for this activity is the same as the latest possible date for the Consultant with HRRB to sign the contract, which is Day 180 or Day 195, as the case may be.</p>	<p>Not applicable</p>	<p>a) It is wrong to say that the Head of the Procuring Entity or Contract Signatory signs the contract immediately after receiving the performance security, because the latter is simply an accessory of the former and, as such, cannot be a condition precedent to a contract. See <u>Brigido R. Valencia v. Rehabilitation Finance Corporation</u>, G.R. No. L-10749 (April 26, 1958).</p>
<p>49. Reference: Page 64</p> <p>11e. Issues Notice to Proceed. IRR-A</p>	<p>ITB, Clause 28</p> <p>Within seven (7) calendar days from the</p>	<p>The earliest possible time for the issuance of the Notice to Proceed should be the same as the earliest possible time for the</p>

Sec. 37.5 states that: "The concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority." Since the latest possible times for the approval of the contract is Day 180 if further approval is not required, for NGAs; Day 195 if further approval is not required, for GOCCs; Day 200 if further approval is required, for NGAs; or Day 225 if further approval is required, for GOCCs; the latest issuance of the notice to proceed is pegged at **Day 187, Day 202, Day 207** or **Day 232**, as the case may be.

For the earliest possible time of this activity, one (1) calendar day after the earliest possible time for the contract to be signed by both parties is assumed for the earliest possible time of this activity, which pegs it to **Day 56**. Take note that this becomes step "11e" when approval of higher authority is not required.

date of approval of the Contract by the appropriate approving authority, the Procuring Entity shall issue its Notice to Proceed.

contract to be signed by both parties, because the former may be issued immediately after the latter but within the same day – thus, Day 55. However, if further approval is required, then the earliest possible time for this activity would have to be the same as the earliest possible time for the approval of contract, because, the issuance of the Notice to Proceed may actually be issued together with or immediately after contract approval – thus, Day 56.

General Procurement Activities and Timelines: Consulting Services (Quality-Cost Based Evaluation)

50. General Comment: Same observations and recommendations as Consulting Services (Quality Based Evaluation), except that in Section 7a., Page 68, although the opening and evaluation of the Financial Envelope is only undertaken for those consultants whose technical proposals have met the minimum technical rating, it need not be undertaken on a separate day. As such, instead of five (5) calendar days and pegging the earliest possible time to Day 50, it is suggested that the number of calendar days provided in the Quality Based Evaluation be adopted, *i.e.* four (4), and that the earliest possible time remain at Day 49.

The relevant provision in IRR-A is Section 33.5.

Procurement by Electronic Means and the G-EPS

51. Reference: Page 79

A. Electronic Bulletin Board

The G-EPS shall have a centralized electronic bulletin board.

Procuring Entities are required to post the following in the G-EPS electronic bulletin board:

a) Invitations to Apply for Eligibility and to Bid (IAEB) for competitive bidding or notices of other procurement opportunities using the alternative methods of procurement;

b) Supplemental / bid bulletins;

c) Contract awards and the corresponding Notice of award, including the reason for award of contract;

d) Other procurement opportunities using

Not applicable

a) The requirement to post notices for other procurement opportunities is repeated twice in (a) and (d).

b) IRR-A, Section 8.2.1 also requires the posting of Bidding results and related information.

<p>the alternative methods of procurement;</p> <p>e) Other notices, announcements, information for interested parties; and</p> <p>f) Procurement monitoring report</p>		
<p>52. Reference: Page 81</p> <p>C. Electronic Catalogue</p> <p>The G-EPS shall have a centralized electronic catalogue of common and non-common use goods, supplies, materials and equipment.</p> <p>Procuring Entities are required to procure common-use goods, supplies, materials and equipment from the Electronic Catalogue in the G-EPS, once it is in operation. The procedures for transacting with the G-EPS shall be provided for in detail in the websites of the G-EPS (procurementservice.net) and the PS-DBM (procurementservice.org).</p> <p>Procuring entities without internet access may avail of the G-EPS Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila.</p>	<p>Not applicable</p>	<p>a) In addition to the features of the Electronic Catalogue mentioned in the PM, it should also be mentioned that, under IRR-A, Section 8.2.3 (d):</p> <p>“The Electronic Catalogue may also feature non-common use items that may be procured directly and without public bidding by procuring entities from suppliers: <i>Provided, however,</i> That for an item to be carried in the Electronic Catalogue for this purpose, the supplier thereof must have been determined as the Lowest Calculated Responsive Bidder in a previous bidding conducted by PS-DBM or by a procuring entity for PS-DBM: <i>Provided, further,</i> That such item will be featured in the Electronic Catalogue for a maximum period of six (6) months unless another supplier offers a price lower by at least five percent (5%) and such supplier is determined by the procuring entity that conducted the previous bidding to meet the eligibility and bidding requirements for the item, in which case the item from the</p>

In addition to the e-catalogue, the G-EPS shall also feature a Virtual Store, Electronic Payment, Electronic Bid Submission, and such other features that may be developed in the future. Procedures for the use of these features will be published once these become operational.

latter supplier will be that featured in the Electronic Catalogue for the remainder of the six (6)-month period.”

It should be noted, however, that this feature has not yet been utilized by PS-DBM in the G-EPS.

b) It should be noted that the Virtual Store, Electronic Payment, Electronic Bid Submission, and such other features that may be developed in the future, are not additional features to the e-catalogue, but are additional features that are undergoing development for the entire G-EPS system. For this reason, a short explanation of the Virtual Store, Electronic Payment and Electronic Bid Submission may prove to be useful.

Other Specialized Types of Procurement

53. Reference: Page 85

1. Procurement of Foreign and Domestic Goods

a) Goods may be obtained from domestic or foreign sources. This non-discriminatory rule is in accordance with the Government’s obligations under international treaties or agreements. It is required, however, that a bidder, whether offering domestic or foreign goods, must

ITB for Goods, Clause 18.3

This clause provides for Goods that may be offered from the Procuring Entity’s country and from abroad.

R.A. No. 5183, entitled “An Act Regulating the Award of Contracts for the Supply to, or Procurement by, any Government-Owned or Controlled Corporation, Company, Agency or Municipal Corporation of Materials, Equipment, Goods and Commodities, and Providing Penalty for the Violation thereof,” provides for a citizenship requirement for the award of supply contracts. Section 1 of R.A. 5183 provides as follows:

<p>be eligible in conformity with the requirements of RA 9184, its IRR-A and the guidelines in Vol. 2, 3 and 4 of this Manual.</p>		<p>“No contract either through a public bidding or negotiated contract for the supply to, or procurement by, any government-owned or –controlled corporation, company, agency or municipal corporation of materials, equipment, goods and commodities shall be awarded to any contractor or bidder who is not a citizen of the Philippines or which is not a corporation or association at least sixty percent of the capital of which is owned by Filipino citizens, except, as to a citizen, corporation or association of a country the laws or regulations of which grant similar rights or privileges to citizens of the Philippines. * *</p> <p>”</p> <p>R.A. No. 5183 is actually the basis for the nationality eligibility requirement for the supply of goods under R.A. 9184. It should be noted though that exceptions to this nationality requirement exists, both in R.A. No. 5183 and Section 23.11.1 of the IRR-A of R.A. 9184. For a further explanation of this, reference should be made to GPPB Resolution No. 02-2004, dated March 10, 2004.</p>
<p>54. Reference: Page 85</p> <p>b) Preference for domestically-produced</p>	<p>ITB for Goods, Clause 33.1 and BDS</p> <p>For GOP funded projects, the Procuring</p>	<p>Although the reference Section is in accordance with Section 43 of R.A. 9184, which provides that the Procuring Entity</p>

<p>goods that meet the specified or desired quality may be allowed in the interest of:</p> <p>1) Availability, that is, the domestically-produced goods are more readily available in the market, like off-the-shelf items;</p> <p>2) Efficiency; and</p> <p>3) Timely delivery of goods.</p> <p>The above-mentioned factors should be considered in the preparation of the Bidding Documents. If the Procuring Entity wishes to exercise domestic preference, it shall be expressly mentioned in the Bidding Documents.</p>	<p>Entity is allowed to grant a margin of domestic preference, in accordance with C.A. 138, otherwise known as the “Flag Law.”</p>	<p>may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality, in the interest of availability, efficiency and timely delivery of goods; this seems to run counter to C.A. 138 which uses the mandatory word “shall” in providing for the grant of domestic preference. In other words, under C.A. 138, regardless of the interest of availability, efficiency and timeliness, domestic entities and domestically sourced and manufactured goods should be given a domestic preference against foreign entities and foreign sourced or manufactured goods. For this reason, it may be better to omit the statements on availability, efficiency, and timeliness when pertaining to GOP funded projects, and focus rather on the mandatory provisions of C.A. 138.</p> <p>It may be suggested that availability, efficiency and timely delivery of goods may still be used as justifications for a domestic preference, in a discretionary manner, for foreign-funded projects with guidelines that contain a non-discriminatory rule in accordance with the GOP’s obligations under international treaties or executive agreements.</p>
<p>55. Reference: Pages 87-88</p>	<p>ITB for Works, Clause 24</p>	<p>The rules for publication contained in the</p>

1) In addition to the DBM publication of the release of funds for provincial projects, the procuring entity shall likewise publish the IAEB or notice of procurement opportunity for provincial projects in compliance with the following requirements:

No conflict

referenced section do not pertain to the IAEB, because the IAEB is already governed by existing publication requirements in IRR-A, Section 21, and discussed in other sections of the PM. Rather, in conformity with IRR-A, Section 45.2, this pertains to the publication of the release of funds for the provincial project awarded through a provincial preference. In effect, this serves as a transparency tool to check against possible leakages in the budget for the said project

i) It shall comply with the publication requirement in the IRR-A and Volumes 2,3 and 4 of this Manual;

ii) It shall be published in a local newspaper with the widest region-wide circulation for a minimum of 8 calendar days and a maximum of 14 calendar days;

iii) It shall be posted at any conspicuous place reserved for the purpose in the premises of the Procuring Entity for 14 calendar days; and

iv) It shall be posted in the website of the DBM and the G-EPS for 14 calendar days.

TECHNICAL EVALUATION: VOLUMES II, III & IV

Common Observations and Recommendations		
<p>When shall the Performance Security be posted by the Lowest Calculated and Responsive Bidder?</p> <p>The performance security shall be posted by the bidder with LCRB upon the signing of the contract by both parties (IRR-A Section 39.1). It is one of the requirements to be submitted by the winning bidder, to form part of the contract. (IRR-A Section 37.2.3) <i>(Please refer to Step 6, Post-Qualify for further discussions on the LCRB.)</i></p>	<p>ITB for Goods, Clause 41.1 ITB for Works, Clause 30 ITB for Consulting Services, Clause 27</p> <p>Within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract between the successful bidder and the Procuring Entity, the successful bidder shall furnish to the Procuring Entity the Performance Security in accordance with the Conditions of Contract, and in the Form prescribed in the Bidding Documents.</p>	<p>While the referenced PM section and the ITB Clauses are worded differently, they have the same effect – that is, the performance security should be posted upon the signing of the contract. ITB Clause 41.1 seems to give the impression that it would be preferred if the performance security is furnished before the signing of the contract, by stressing that the former should in no case occur after the latter. However, it should be remembered that the performance security can never be issued ahead of the contract signing, because the former is simply an accessory of the latter and, as such, cannot be a condition precedent to a contract. See <u>Brigido R. Valencia v. Rehabilitation Finance Corporation</u>, G.R. No. L-10749 (April 26, 1958).</p>
<p>When, where, and for how long do you post an Invitation to Apply for Eligibility and to Bid?</p> <p>* * * At least twice within a maximum period of fourteen (14) calendar days (advisably from the seventh (7th) calendar day after the pre-procurement conference), with at least six (6) calendar</p>	<p>Not applicable</p>	<p>IRR-A, Section 20, does not require any timeframe for the holding of the pre-procurement conference. On a practical note, it may be advisable to give the agency leeway for this activity, as it is not considered part of the bidding timeline. Moreover, providing for a fixed period may influence the BAC to require the immediate newspaper publication of a</p>

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days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;

bidding activity for mere compliance purposes, despite a finding being made during the pre-procurement conference about the need for more preparation therefor. As such, while the period of seven (7) calendar days between the pre-procurement conference and the advertisement of bidding may be stated as advisable, it may also be stressed that if the BAC finds that it is not prepared to undergo the bidding procedure, it should not hesitate to consider moving back the posting or publication thereof, to allow more time to perfect the same.

What is the Reservation Clause?

The Reservation Clause declares that the procuring entity reserves the right to reject any and all bids, to declare a failure of bidding, or not to award the contract. **(IRR-A Section 41)**

Not applicable

In the case of Mata v. San Diego, G.R. No. L-30447 (March 21, 1975), the Supreme Court of the Philippines declared that a bidder is bound by the reservation clause, and the said clause vests in the authority concerned the discretion to ascertain who among the bidders is the lowest responsive bidder or the lowest and best bidder or most advantageous to the best interest of the Government. As such, a bidder has no right or cause of action to compel the BAC or agency to award it the contract. The Court further stated that this requires inquiry, investigation, comparison, deliberation and decision – a quasi-judicial function which, when honestly exercised, may not be reviewed by the

		<p>courts.</p> <p>It should be noted, however, that R.A. 9184, Section 41, has placed some limiting qualifiers on the possible contents of the Reservation Clause.</p>
<p>Tips: Let's make doing things easier</p> <p><u>On a post-award conference</u></p> <p>The BAC is encouraged to hold a post-award conference, and announce the date, time and venue during the bid opening. It is suggested that this conference be held after the winning bidder has posted its performance bond. In this conference, the BAC shall discuss the bid evaluation process and explain the results of the bid evaluation. This will enhance transparency of the bidding process and inform the bidders about the weaknesses in their bids, thereby serving as a learning experience for both the procuring entity and the bidders. The procuring entity may also take this opportunity to return the bids (together with the bid security) submitted by the losing bidders.</p>	<p>Not applicable</p>	<p>This Tip may not at all be advisable as it may encourage losing bidders to raise complaints, even if beyond the deadline therefore. Losing bidders may also use this opportunity to try to discredit the winning bidder.</p>
<p>Can a bidder withdraw its bid?</p> <p>Yes, a bidder may, through a letter, withdraw its bid, but it must do so before</p>	<p>ITB for Goods, Clause 27 ITB for Works, Clause 20 ITB for Consulting Services, Clauses 16.6-16.10</p>	<p>Both ITB Clause 27 and IRR-A, Section 26, provide detailed discussions on the modification and withdrawal of bids. It is suggested that this form be adopted by</p>

<p>the deadline for the submission and receipt of bids, if it wishes to avoid any penalties. The withdrawal of its bid shall disqualify the bidder to further participate in the bidding. The Letter of Withdrawal must be received by the procuring entity prior to the deadline prescribed for the submission and receipt of bids.</p>	<p>This clause discusses modification and withdrawal of bids.</p>	<p>the PM.</p>
<p>Methodology: How are bids evaluated? (Goods, Pages 59-60)</p> <p>Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to determine the calculated prices. (IRR-A Section 32.4.1 [b]) In case of foreign currency-denominated bids by foreign suppliers, in allowed instances, the bid must be converted into Philippine currency based on the exchange rate prevailing on the day of the bid opening. (IRR-A Section 61.1) The BSP reference rate as of the date of the bid opening shall be used.</p>	<p>ITB for Goods, Clause 19.1 and BDS</p> <p>Prices shall be quoted in the following currencies:</p> <p>a) For goods and services that the bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos.</p> <p>b) For goods and services that the bidder will supply from outside the Philippines, the prices may be quoted in the Philippine Pesos or (if so allowed by the Procuring Entity) in United States Dollars at the discretion of the bidder. However, for purposes of bid evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.</p> <p>GCC for Goods, Clause 9.4</p> <p>The currency in which the payment is</p>	<p>The PM is more specific in providing that the conversion rate shall be based on the BSP reference rate, although Section 32 of the ITB also specifies the BSP in providing for conversion to a single currency. At any rate, the conversion shall be for bid evaluation purposes, and as far as GOP-funded projects are concerned, payment shall be in Philippine Pesos. More importantly, while the PM for Goods specifies that foreign currency-denominated bids may be submitted by foreign suppliers, the ITB for Goods allows the Procuring Entity to consider foreign currency-denominated bids even for domestic suppliers, provided that the goods or services come from outside the Philippines.</p> <p>IRR-A, Section 61, does not make any distinction, because it simply provides as follows:</p> <p>“* * * All contracts shall be denominated</p>

	<p>made to the Supplier under this contract shall be in Philippine Pesos.</p>	<p>and payable in Philippine currency, and this shall be stated in the bidding documents: <i>Provided, however,</i> That should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.”</p> <p>Moreover, the ITB for Goods limits the foreign currency to United States Dollars.</p> <p>It is suggested that the provision in the ITB for Goods be adopted, as it is more practical, the form of currency is limited to United States Dollars which is freely convertible, and the choice is still given to the Procuring Entity on whether to allow such foreign currency-denominated bids for foreign sourced goods/services.</p>
<p>Methodology: How are bids evaluated? (Works, Page 60)</p> <p>b) Minor arithmetical corrections to consider computational errors, omissions and discounts, if allowed in the bidding documents, to enable proper comparison of all eligible bids. Any adjustment shall be calculated in monetary terms to determine the calculated prices. (IRR-A Section 32.4.1 [b]) In case of foreign currency-denominated bids by foreign</p>	<p>ITB for Works, Clause 12</p> <p>All bid prices shall be quoted in Philippine Pesos. However, for purposes of evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate prevailing on the day of the bid opening.</p> <p>All contracts shall be denominated and payable in Philippine Pesos.</p>	<p>It appears that the ITB is stricter with respect to foreign currency-denominated bids. As the first sentence provides in absolute terms that “[A]ll bid prices shall be quoted in Philippine Pesos,” it seems that the consideration of foreign currency-denominated bids and the conversion policy only applies to bids submitted in ADB, JBIC and WB funded projects.</p> <p>At any rate, as with Goods, any conversion shall be based upon the</p>

**Technical Report:
Procurement Manuals**

Technical Evaluation: Volumes II, III & IV

<p>bidders, in allowed instances, the bid must be converted into Philippine currency based on the exchange rate prevailing on the day of the bid opening. (IRR-A Section 61.1) The BSP reference rate prevailing on the date of the bid opening shall be used.</p>		<p>exchange rate prevailing on the day of the bid opening and, as provided in the PM for Works, the BSP reference rate shall be used. Also similar to Goods, all contracts are required to be denominated in Philippine Pesos</p>
<p>How are contract prices to be denominated? (Consulting Services, Page 95)</p> <p>All contracts shall be denominated and payable in Philippine currency, and this shall be stated in the bidding documents. Should the procuring entity receive bids denominated in foreign currency, the same shall be converted to Philippine currency based on the exchange rate officially prescribed for similar transactions as established by the BSP on the date of the bid opening.</p>	<p>ITB for Consulting Services, Clause 15</p> <p>All costs shall be denominated and payable in Philippine Pesos.</p> <p>For purposes of Financial Proposals, the Procuring Entity shall convert bids denominated in foreign currency into Peso equivalent based on the exchange rate prevailing on the day of the opening of the bids as posted by the BSP.</p> <p>GCC for Consulting Services, Clause 19</p> <p>All payments shall be made in Philippine Pesos.</p>	<p>For the case of consulting services, both PM and ITB seem to allow bids to be denominated in foreign currency, provided that it shall be converted into its Peso equivalent based on the exchange rate prevailing on the day of the opening of the bids as posted by the BSP.</p> <p>Similar to Goods and Works, all contracts and payments shall be in Philippine Pesos.</p>
<p>Subcontracts (Goods, Page 110)</p> <p>Generally, a supplier may be allowed to subcontract a portion of the contract or project, provided the work subcontracted is not a material or significant portion thereof, or shall not exceed twenty percent (20%) of the total project cost.</p>	<p>ITB for Goods, Clause 7</p> <p>Provides for the same level of liability on the part of the primary contractor, but no maximum allowable limit is given.</p>	<p>The PM provides a condition for subcontracting that the work subcontracted is not a material or significant portion of the contract or shall not exceed twenty percent (20%) of the total project cost. The percentage limit provided seems to be more for the purpose of providing a precise definition or measure of the terms "material" and</p>

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<p>The bidding documents must specify what are considered as significant/material component/s of the project.</p> <p>All subcontracting arrangements must be disclosed at the time of bidding, and subcontractors must be identified in the bid submitted by the supplier.</p> <p>Any subcontracting arrangements made during project implementation and not disclosed at the time of the bidding shall not be allowed. The subcontracting arrangement shall not relieve the supplier of any liability or obligation under the contract. Moreover, subcontractors are obliged to comply with the provisions of the contract and shall be jointly and severally liable with the principal supplier, in case of breach thereof, in so far as the portion of the contract subcontracted to it is concerned.</p>		<p>“significant,” and may be advisable. However, as this is neither provided in the ITB for Goods nor in R.A. 9184 and its IRR-A, this should be presented in the PM as a suggestion rather than with the mandatory word “shall.”</p>
<p>Subcontracting (Works, Page 85)</p> <p>The contractor should not be allowed to subcontract more than fifty percent (50%) of the value of the works. Moreover, except if otherwise provided by the contract, it should not subcontract any part of the works without the prior consent of the head of the procuring entity.</p>	<p>GCC for Works, Clause 8</p> <p>The contractor cannot subcontract more than fifty percent (50%) of the value of the works. Subcontracting of any portion of the works does not relieve the contractor of any liability or obligation under this contract.</p>	<p>Both the PM and the GCC for Works provide for the same liability for the primary contractor and the same maximum limit for subcontracting.</p>

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<p>However, this consent shall not relieve the contractor of any liability or obligation under the contract. The contractor will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects, or those of its agents, servants or workmen.</p> <p>All subcontracting arrangements should be disclosed at the time of bidding, and subcontractors shall be identified in the bid submitted by the eligible bidder. For them to be allowed to do so, subcontractors should also pass the eligibility check for the portions of the contract that they will undertake.</p>		
<p>Subcontracting (Consulting Services, Page 96)</p> <p>The consultant may subcontract work relating to the project to an extent and with such specialists and entities as may be approved in advance by the procuring entity, provided that it submits to the procuring entity for prior approval the text of any proposed subcontract and any amendments thereto which may subsequently be proposed. It is suggested that the work subcontracted should not be a material or significant portion of the project, or should not</p>	<p>GCC for Consulting Services, Clause 50</p> <p>Practically contains the same provisions, except for the maximum allowable limit.</p>	<p>As with the PM for Goods, the PM for Consulting Services provides a condition for subcontracting that the work subcontracted is not a material or significant portion of the contract or shall not exceed twenty percent (20%) of the total project cost. The percentage limit provided seems to be more for the purpose of providing a precise definition or measure of the terms “material” and “significant,” and may be advisable. Unlike the provision of the PM for Goods, however, the maximum limit in the PM for Consulting Services is presented as a suggestion, and is thus more acceptable.</p>

exceed twenty percent (20%) of the total project cost. Notwithstanding the approval of the subcontract, the consultant should retain full responsibility for the project and for the content of all reports required therefor. In the event that any subcontractor is found by the procuring entity to be incompetent or incapable in discharging assigned duties, the procuring entity may request the consultant to provide a replacement, with qualifications and experience acceptable to the procuring entity, or to resume the performance of the work itself.

All subcontracting arrangements should be disclosed at the time of bidding, and subcontractors shall be identified in the bid submitted by the bidder. For them to be allowed to do so, subcontractors should also pass the eligibility check for the portions of the contract that they will undertake.

PHILIPPINES:
GENERIC PROCUREMENT
MANUALS

A Presentation for the Philippine
Government

Volume I

Guidelines on the Establishment of
Procurement Systems and
Organizations

Principles of Government Procurement

- Transparency
 - Wide dissemination of bid opportunities
 - Posting in G-EPS and Agency website
 - NGO and private sector observers
 - Documentation of transactions and availability of records

Principles of Government Procurement

- Competitiveness
 - Equitable treatment of bidders
 - Fair grounds for competition
 - Competition will encourage lower prices and more beneficial terms to the Government
 - Alternative methods only apply when competitive bidding is not a feasible option

Principles of Government Procurement

- Streamlined process and Use of IT
 - Simple and non-discretionary procurement process
 - Adaptability to advances in modern technology to ensure an effective and efficient method
 - Periodic review of procurement procedures by the GPPB

Principles of Government Procurement

- Accountability
 - Responsibilities of each official involved must be clear and legally identifiable
 - Applies to:
 - Public officials (directly or indirectly involved in the procurement process and contract implementation)
 - Private parties that deal with the Government

Principles of Government Procurement

- Public Monitoring
 - Covers the procurement process and contract implementation
 - Ensures compliance with national procurement program in R.A. 9184 and performance according to specifications
 - Reporting mechanism to GPPB
 - NGOs are allowed to submit Procurement Monitoring Reports

Procurement Organization

- Responsibilities of the Head of the Procuring Entity:
 1. Approve the APP (ensure regular preparation)
 2. Establish the BAC and BAC Secretariat
 3. Approve/Disapprove Recommendation of Award
 4. In case approval of contracts is required, to act within 20 (30) calendar days
 5. Ensure BAC and BAC Secretariat give utmost priority to assignments
 6. Ensure professionalization of procurement organization
 7. Impose proper administrative sanctions
 8. Ensure that BAC and TWG receive their incentives

Procurement Organization

- The Bids and Awards Committee (BAC)

General Rule:

Single BAC in Head Office

Exception:

To expedite the procurement process for practical intents and purposes where the number and complexity of the items to be procured warrants

BAC Composition:

The BAC shall have at least FIVE (5) MEMBERS, but not more than SEVEN (7) MEMBERS

Procurement Organization

- **BAC for NGAs, GOCCs, GFIs & SUCs**

- The members including the Chairman shall be designated by the Head of the Procuring Entity

Regular Members -

1. Chairman (3rd Ranking Permanent Official);
2. Member representing the Legal or Administrative areas of the procuring entity;
3. Member representing the Finance Area of the Procuring Entity.

Provisional Members -

1. An officer who has Technical expertise relevant to the procurement.
2. Representative from the end user unit.

- **BAC for Local Government Units**

- The Local Chief Executive shall designate the members of the BAC.
- The BAC members shall elect among themselves who shall act as the Chairman

Members:

1. Budget Office
2. Legal Office
3. Engineering Office
4. General Services Office
5. Administrative Office
6. End User Office
7. Other Regular Office

Procurement Organization

- In Head Offices, regular members of the BAC shall be 5th Ranking Permanent Official
- In Bureaus, Regional / Sub-Regional / District Offices regular members shall be 3rd Ranking Permanent Personnel
- The Head of the Procuring Entity has the option to designate Two (2) more members
- BAC Members shall have a fixed term of ONE (1) YEAR
- Quorum – Majority ($1/2$ of membership + 1), but Chairman or Vice-Chairman should be present
- Chairman (or in his absence, Vice-Chairman) is the Presiding Officer and shall vote only in case of a tie
- Procurement Proficiency should be considered by the Head of the Procuring Entities in designating members of the BAC and BAC Secretariat

Procurement Organization

- Succession - in case of resignation, retirement, separation, transfer, re-assignment, removal, death, the replacement shall serve only for the unexpired term
- Leave or Suspension - In case of leave or suspension, the replacement shall serve only for the duration of the leave or suspension
- Checks and Balances - In no case shall the approving authority be the Chairman or a member of the BAC
- “Jury Duty” - BAC members shall give utmost priority to BAC assignments over all other duties and responsibilities

Procurement Organization

- Responsibilities of the BAC:
 1. Recommend Method of Procurement
 2. Create TWG
 3. Advertise/Post Invitation to Bid
 4. Pre-Procurement & Pre-Bid Conferences
 5. Eligibility Check
 6. Receive & Open Bids
 7. Evaluate Bids (with assistance of TWG)
 8. Post-Qualification
 9. Resolve Motions for Reconsideration
 10. Recommend Award of Contract
 11. Recommend Imposition of Sanctions

Procurement Organization

- Other Responsibilities of the BAC:
 1. Invite Observers during all stages of the procurement process
 2. Furnish Observers with:
 - Minutes of BAC Proceedings
 - Abstract of Bids
 - Post-Qualification Summary Report
 - APP and related PPMP
 - Copies of “opened” proposals
 3. Prepare Procurement Monitoring Report
 4. Other related functions

Procurement Organization

- The BAC Secretariat
 - Head of the Procuring Entity shall create a BAC Secretariat to serve as the main support unit of the Bac
 - He may designate an existing organic office to serve as BAC Secretariat
 - To promote professionalization, he may reorganize the organic office by designating it as BAC Secretariat and redeploying appropriate existing personnel to it to perform this function and other procurement related tasks

Procurement Organization

- Head of the BAC Secretariat:
 - Central Offices - 5th ranking permanent employee
 - Bureaus/Regional Ofcs. - 3rd ranking permanent employee
 - If not available, a permanent employee of the next lower rank

Procurement Organization

- Responsibilities of the BAC Secretariat:
 1. Provide administrative support to the BAC
 2. Organize all BAC and TWG meetings
 3. Attend BAC meetings as Secretary
 4. Prepare minutes of the BAC meetings
 5. Custody and distribution of procurement documents
 6. Assist in managing procurement process
 7. Monitor procurement activities and milestones
 8. Prepare APP from consolidated PPMPs
 9. Arrangements for Pre-Procurement and Pre-Bid Conferences and bid openings
 10. Central channel of communications for BAC with all parties
 11. Assist BAC in preparing drafts of Resolutions

Procurement Organization

- TWG created by the BAC from a pool of technical, financial and/or legal experts.
- Responsibilities of the TWG:
 1. Assist BAC in preparing bidding documents
 2. Assist BAC in eligibility check/short-listing
 3. Assist BAC in bid evaluation and preparation of reports
 4. Assist BAC in post-qualification and prepare the post-qualification summary report
 5. Assist BAC and BAC Secretariat prepare Resolution Recommending Award, with regard to technical aspect, if necessary

Procurement Organization

- Observers
- In addition to the representative of COA, the BAC shall invite, **IN ALL STAGES** of the procurement process, **TWO (2) OBSERVERS** to sit and monitor the procurement proceedings, to wit:
 1. Duly recognized private sector association
 2. Non-government organization (NGO)
- The observers shall come from an organization duly registered with the SEC, and should:
 1. Have knowledge, experience or expertise in procurement
 2. Have no direct or indirect interest in the contract to be bid out
 3. Comply with other criteria determined by the BAC

Procurement Organization

- Honoraria for BAC members, subject to fund availability
- Training Program to professionalize BAC, Secretariat and TWG members
- Provisions on private sector observers

Procurement Planning

- Annual Procurement Plan (APP)
 - Preparation, Maintenance and Update of an APP is mandated by law
 - Must be approved by the Head of the Procuring Entity or 2nd in Rank
 - APP should include provisions for foreseeable emergencies based on historical records
 - APP should include specific Project Procurement Management Plan (PPMP)

Procurement Planning

- PPMMP deals with:
 1. Planning for the procurement of project requirements
 2. Bidding or procurement strategy
 3. Source selection
 4. Delivery and payment schedules
 5. Contract administration
 6. Contract termination
 7. Other major milestones

Procurement Planning

- Developing the Project Requirements:
 1. Identify the need of the PMO or end-user unit
 2. Identify the alternative solutions/products/ services
 3. Compare the alternatives (considering qualitative and quantitative factors)
 - Value for money
 - Risk assessment and management
 - Gov't policies that have impact on project
 - Other relevant factors
 4. Choose from among the alternatives and make recommendation

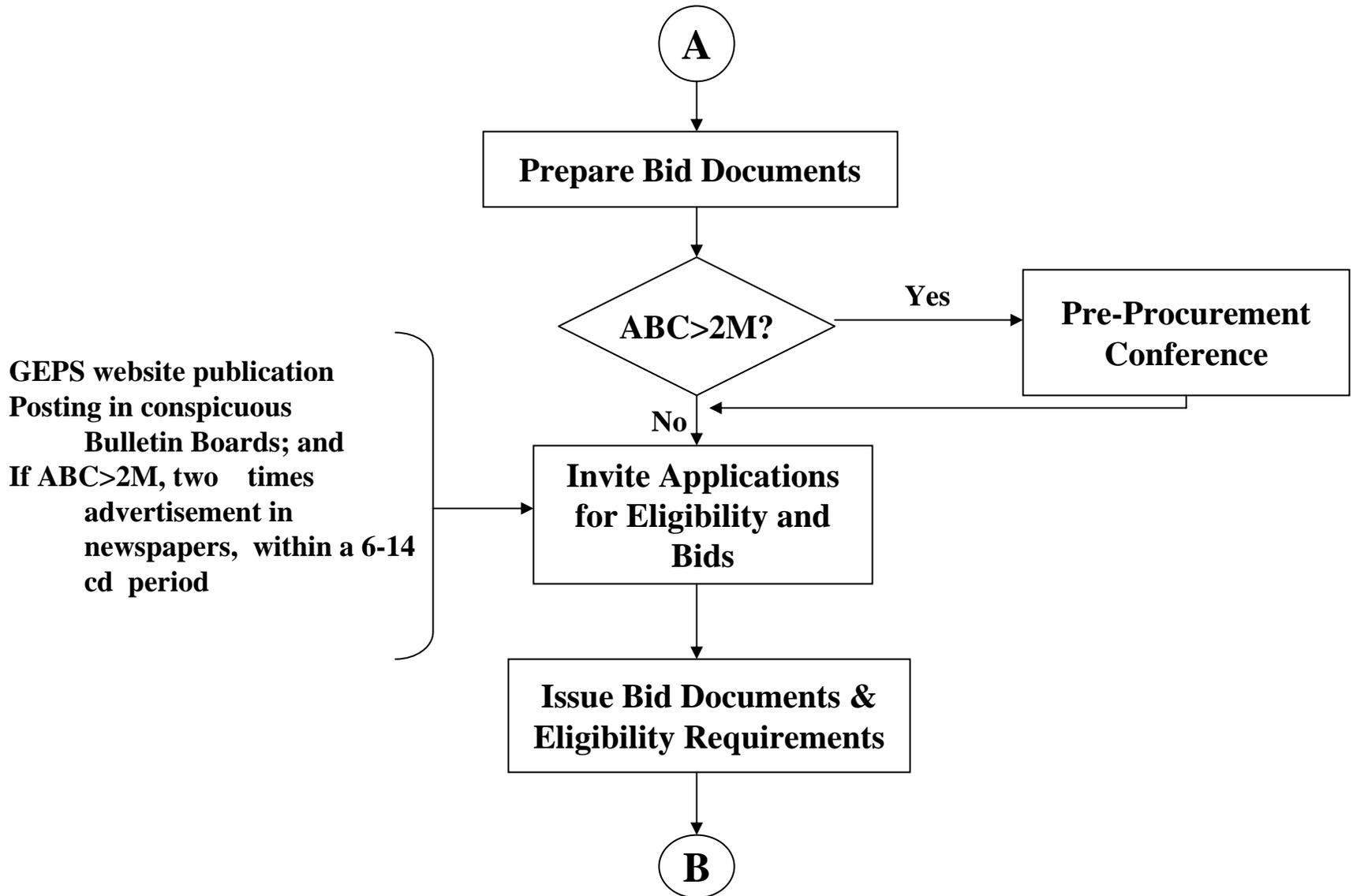
Procurement Planning

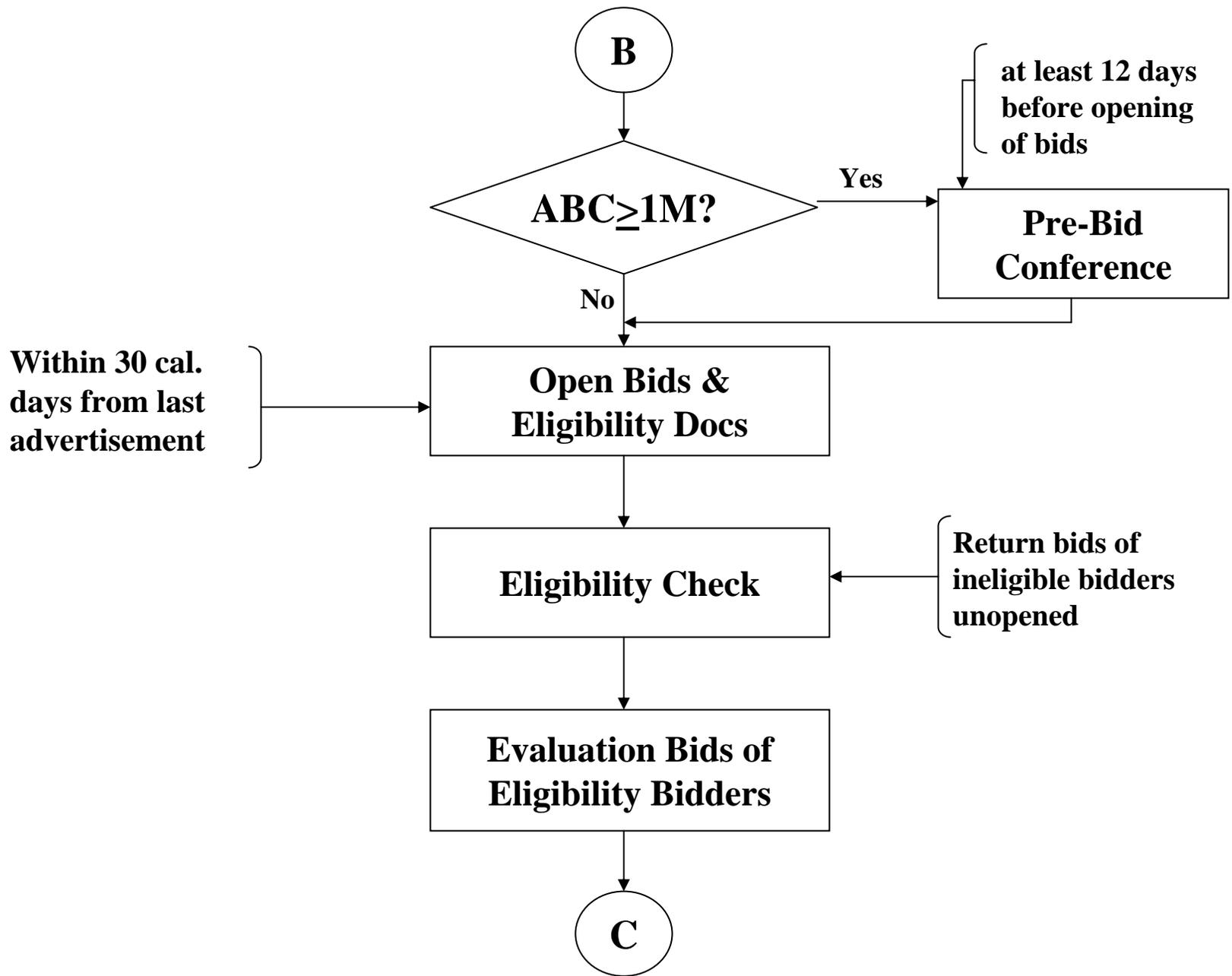
- PPMP should include the following:
 1. Name of the project/procurement
 2. General description of the project/proc.
 3. Extent/size of contract scopes/packages
 4. Procurement methods to be adopted, indicating if the procurement tasks are to be outsourced

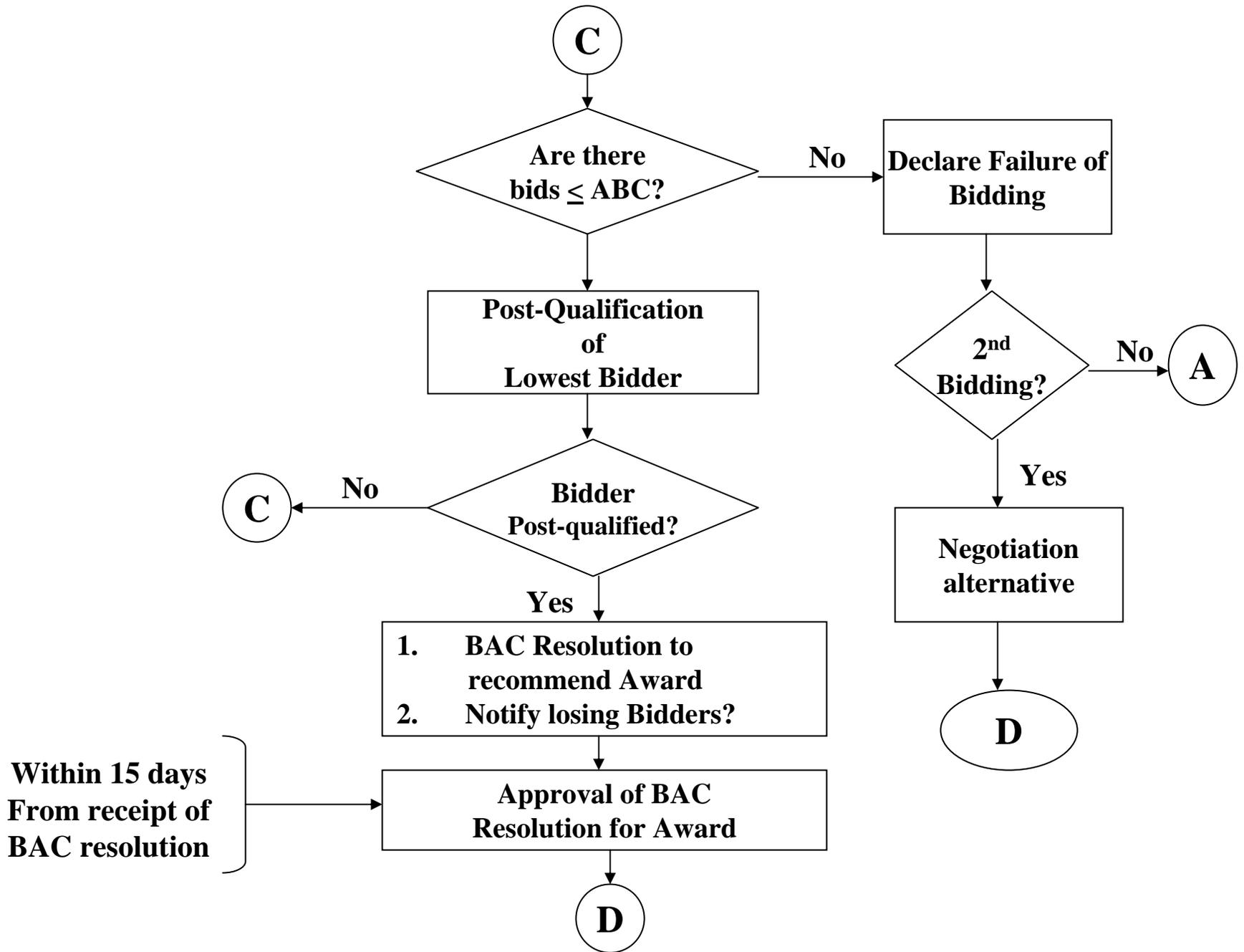
Procurement Planning

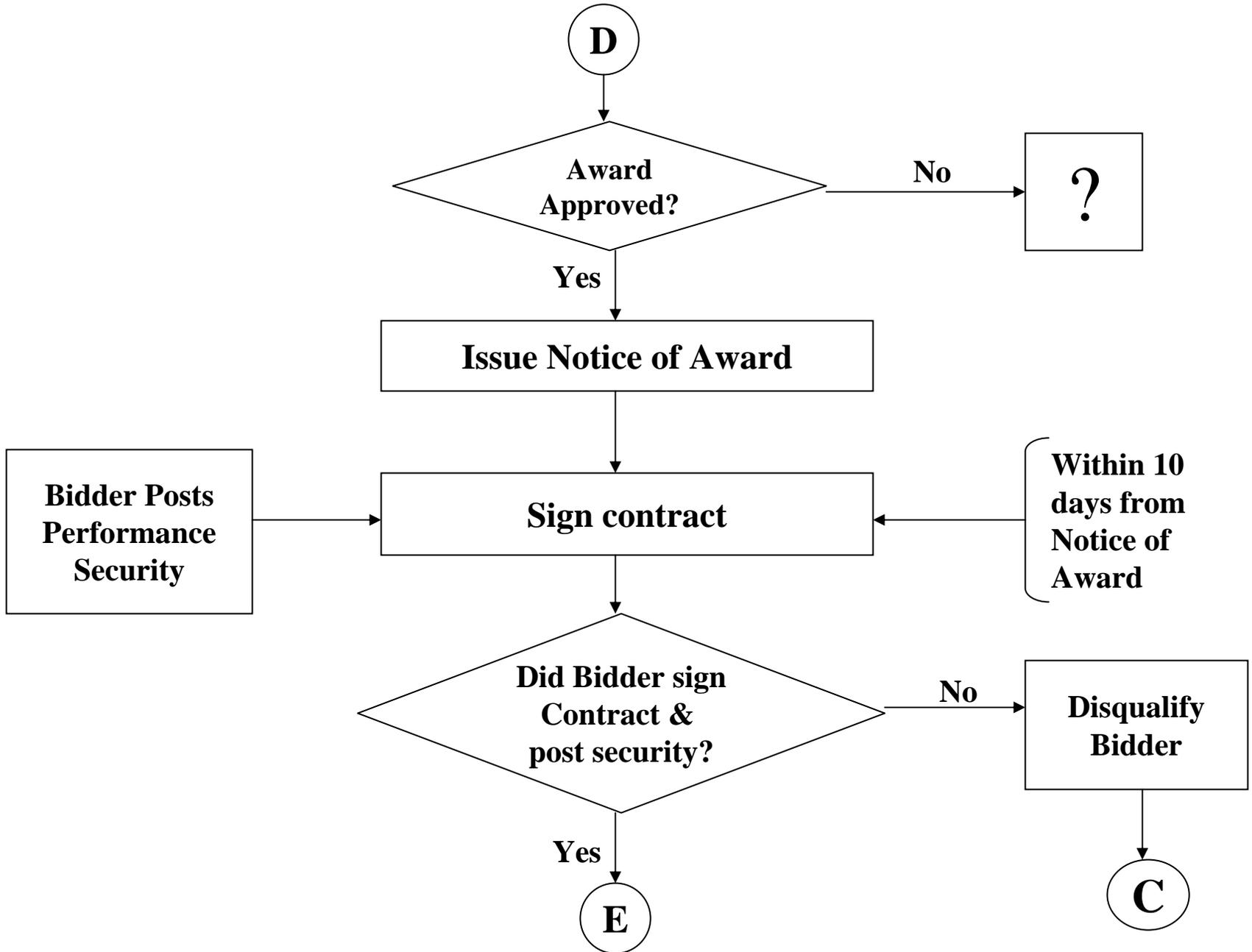
- Approved Budget for the Contract (ABC)
 - Refers to budget for the contract duly approved by the Head of the Procuring Entity
 - Approved Budget is CEILING for bid prices
 - Invitation to Bid should specify the APPROVED BUDGET for the contract and the source of funding
 - In determining ABC, consider:
 - Appropriation for the project/procurement
 - Market price
 - Inflation and cost of money directly related to the procurement timetable

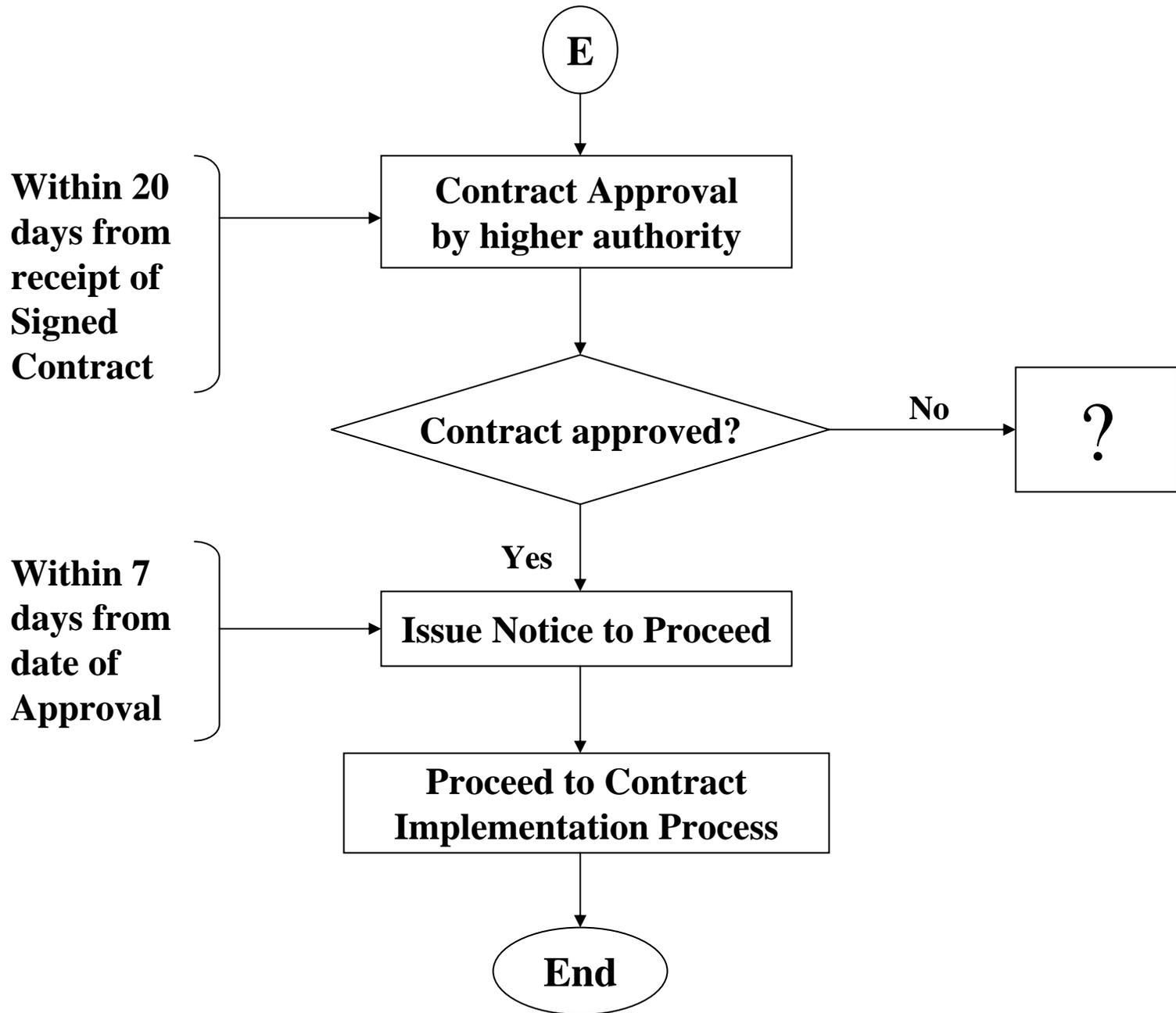
Bidding Process for Procurement of Goods/Services



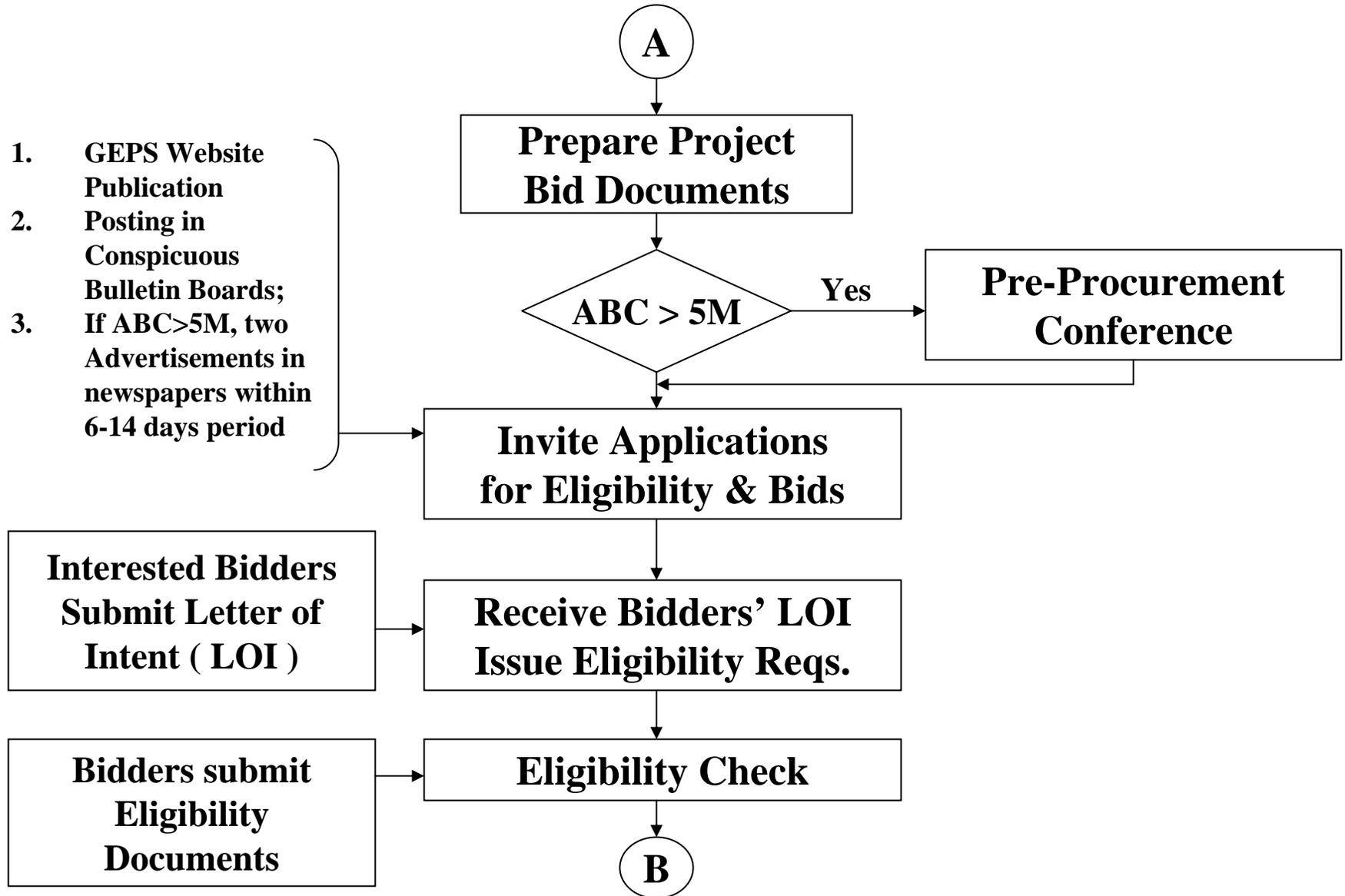


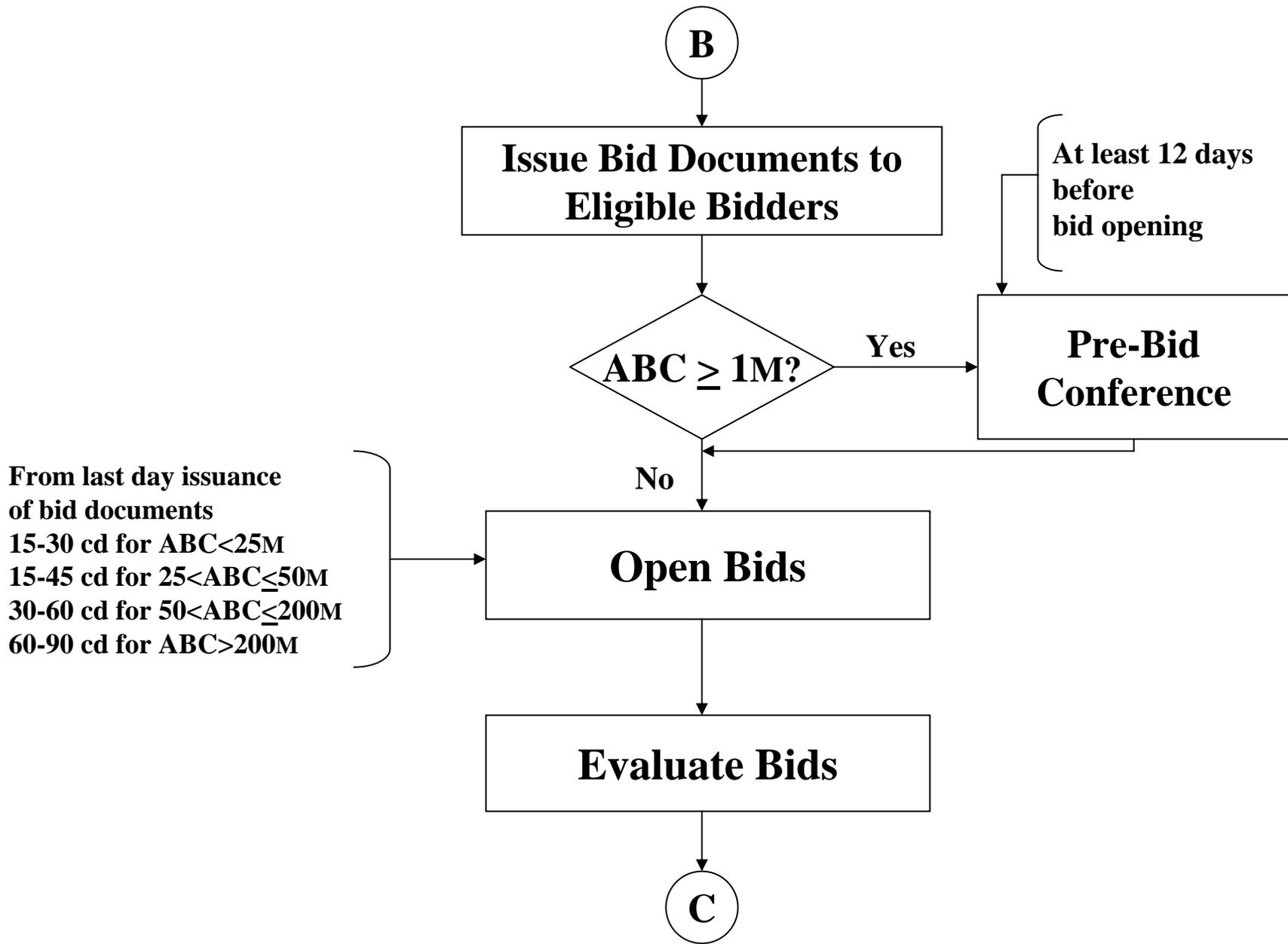


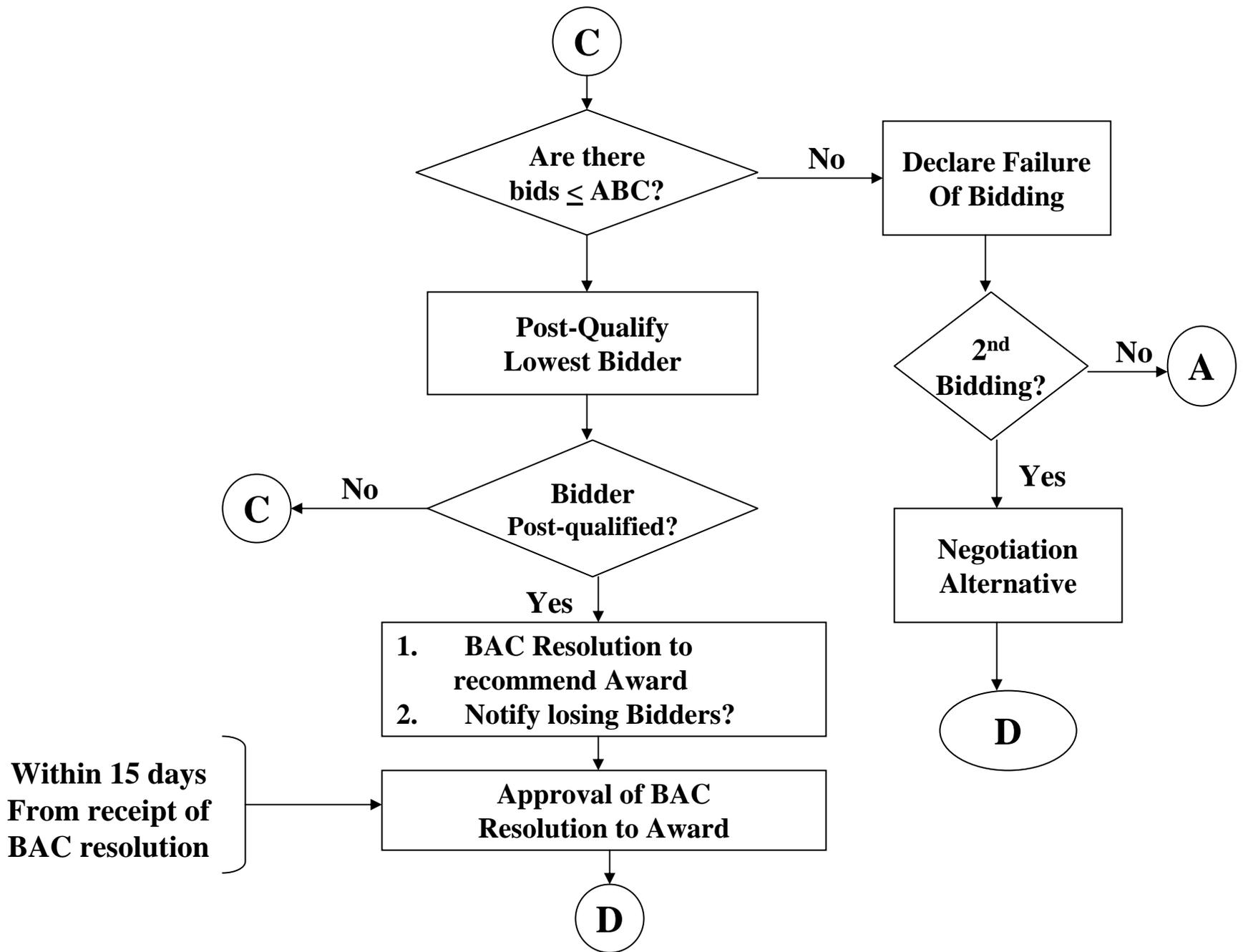


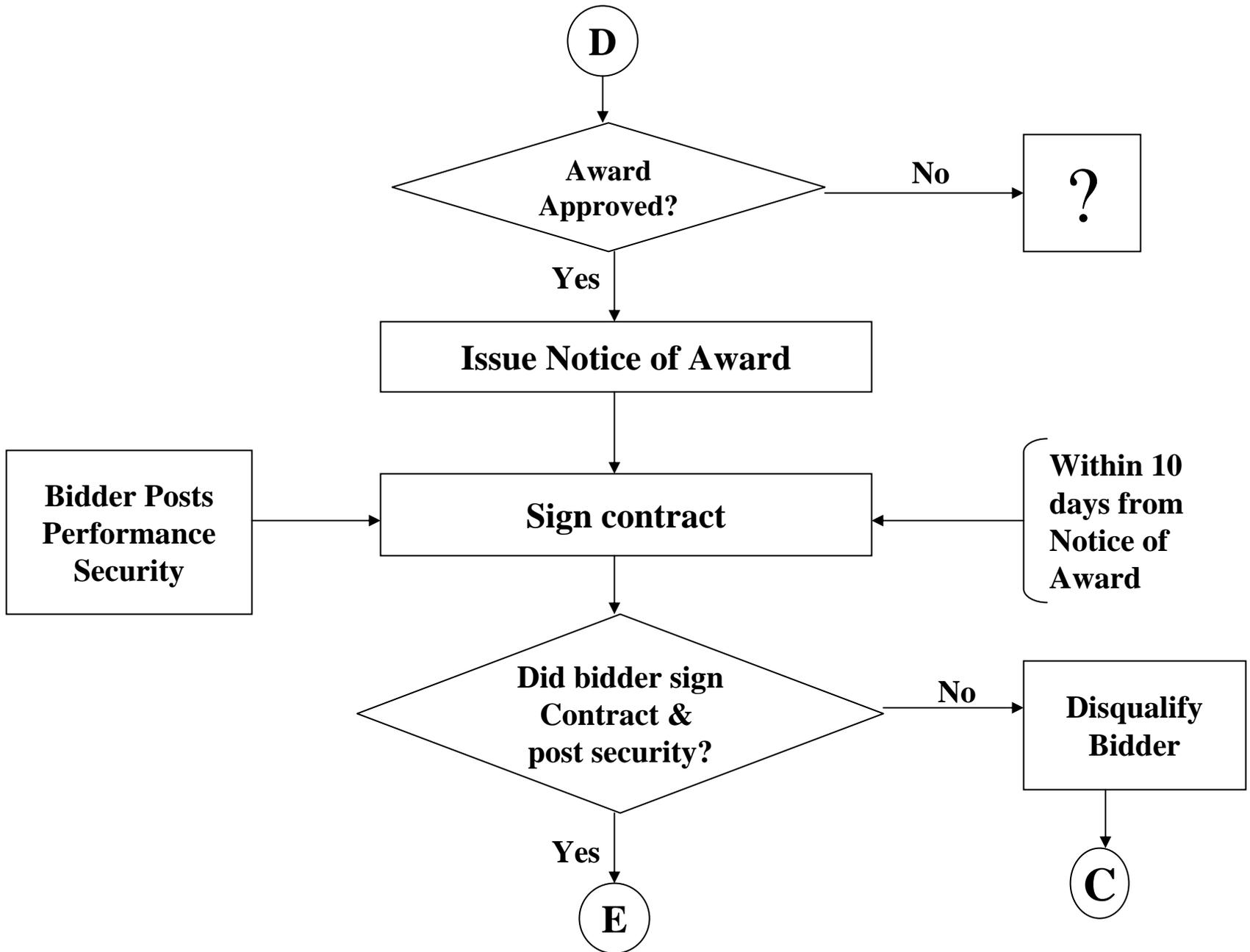


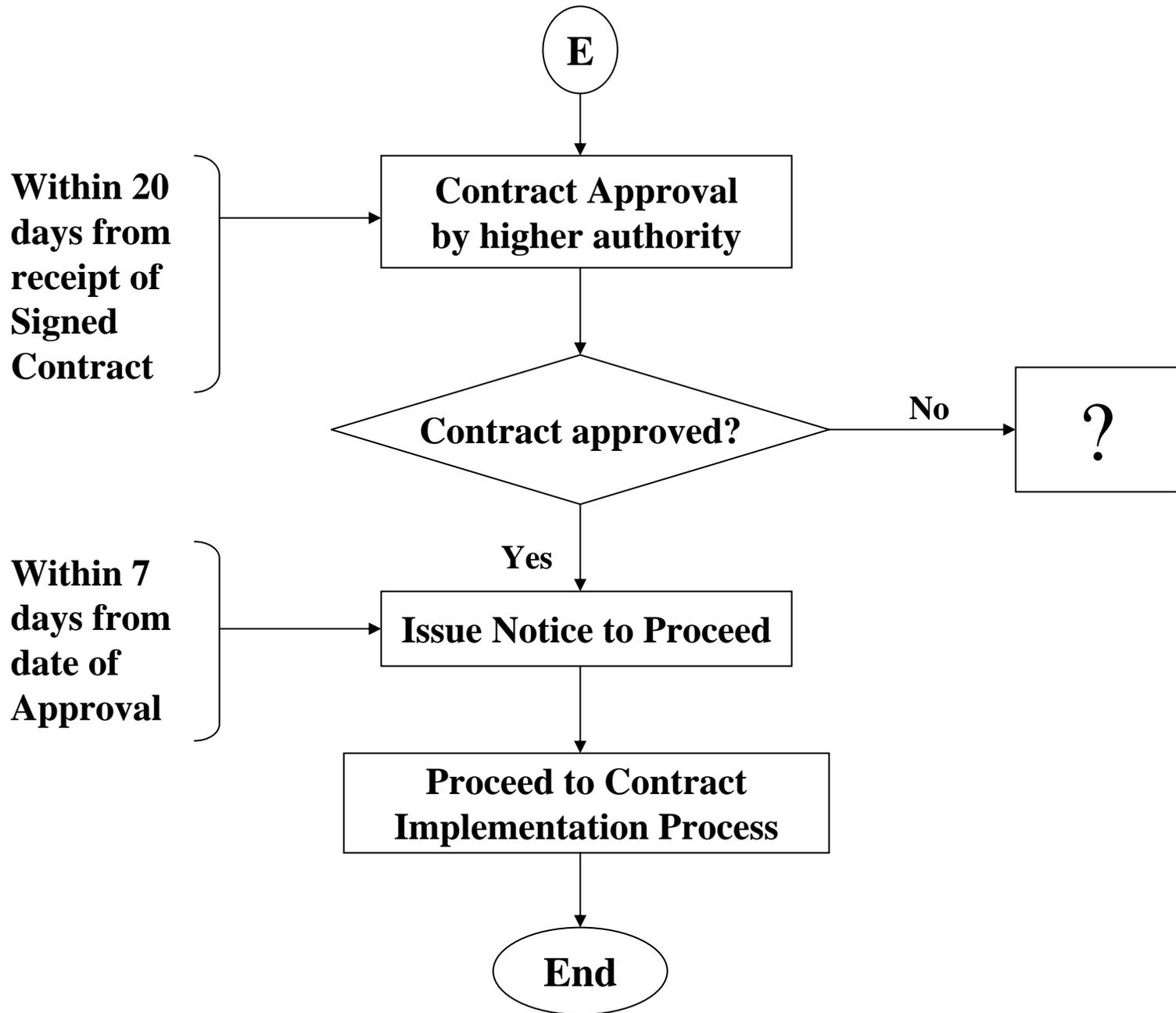
Bidding Process for Infrastructure/Civil Works Project









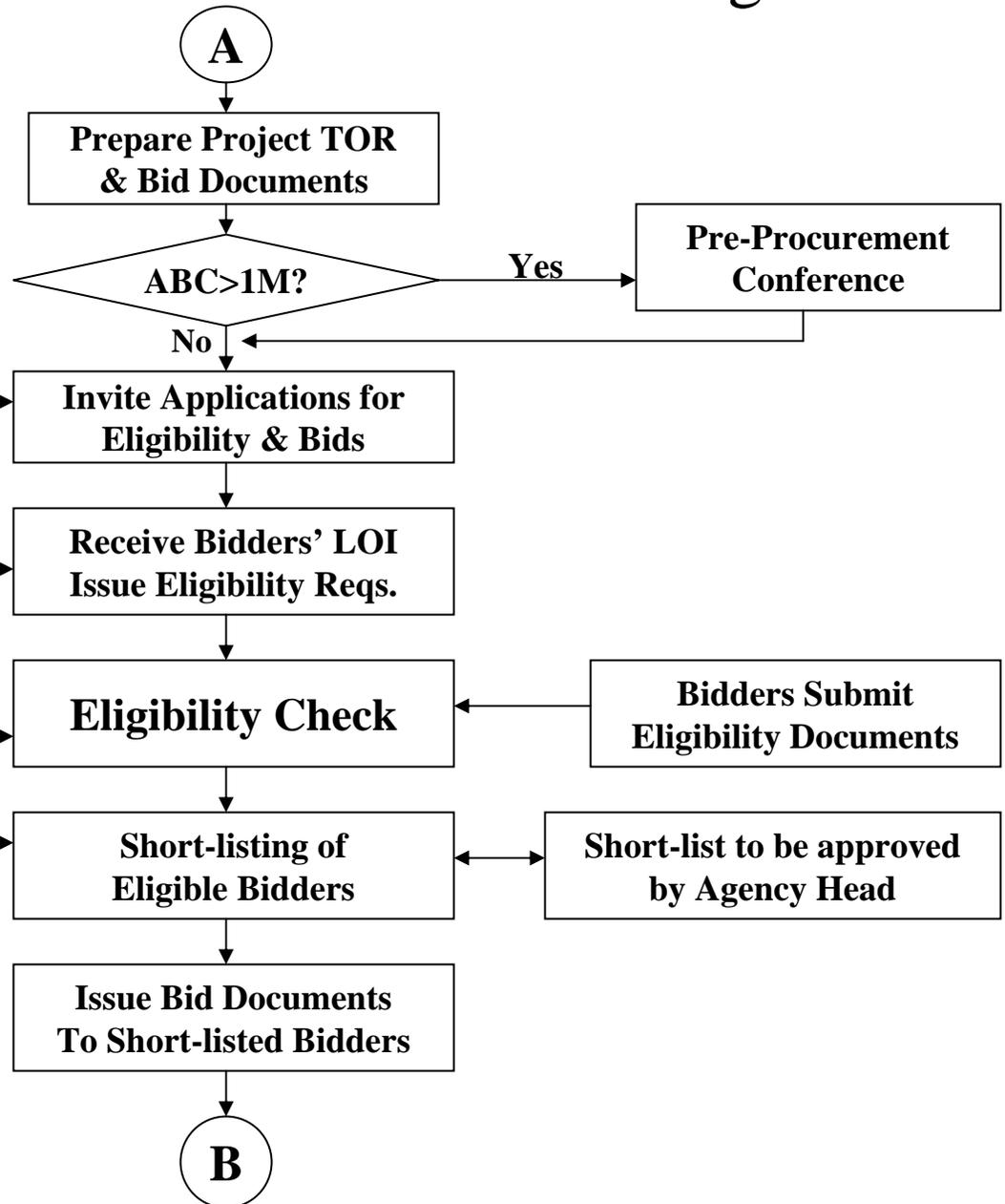


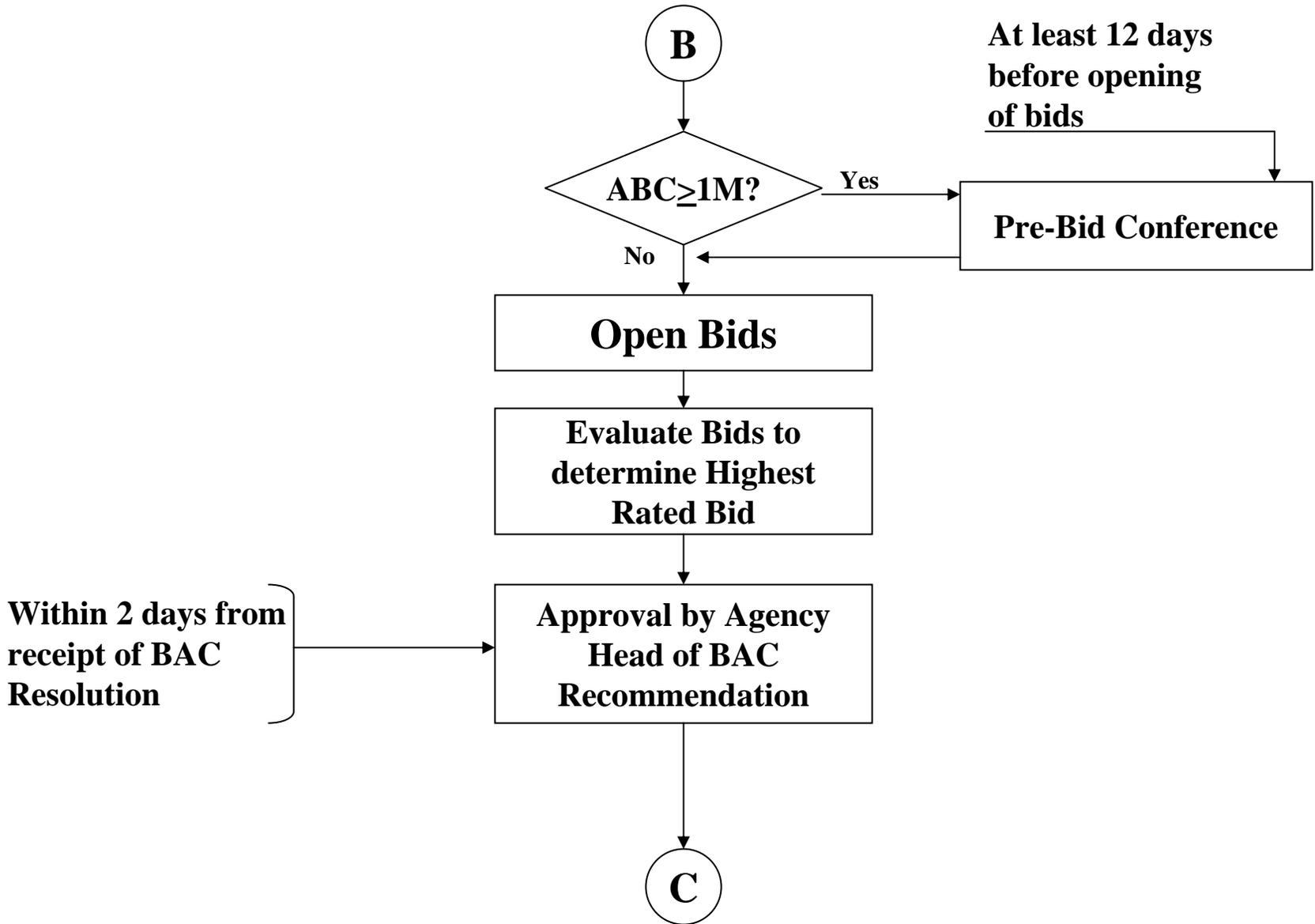
Bidding Process for Procurement of Consulting Services

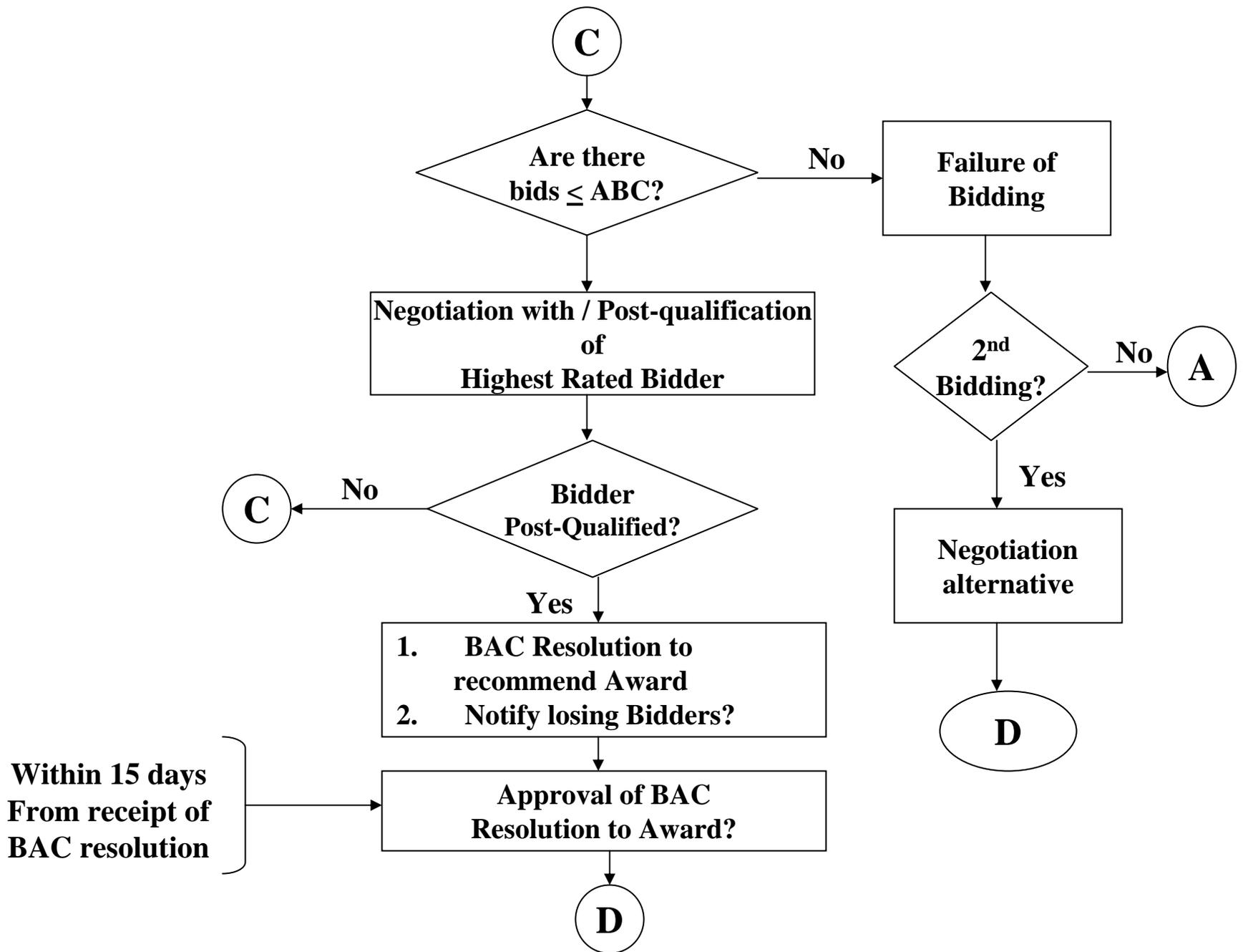
1. GEPS website publication
2. Posting in Conspicuous Bulletin Boards
3. If $ABC > 1\text{M}$ and duration > 4 months, 2 advertisements in newspapers within 6-14 day period

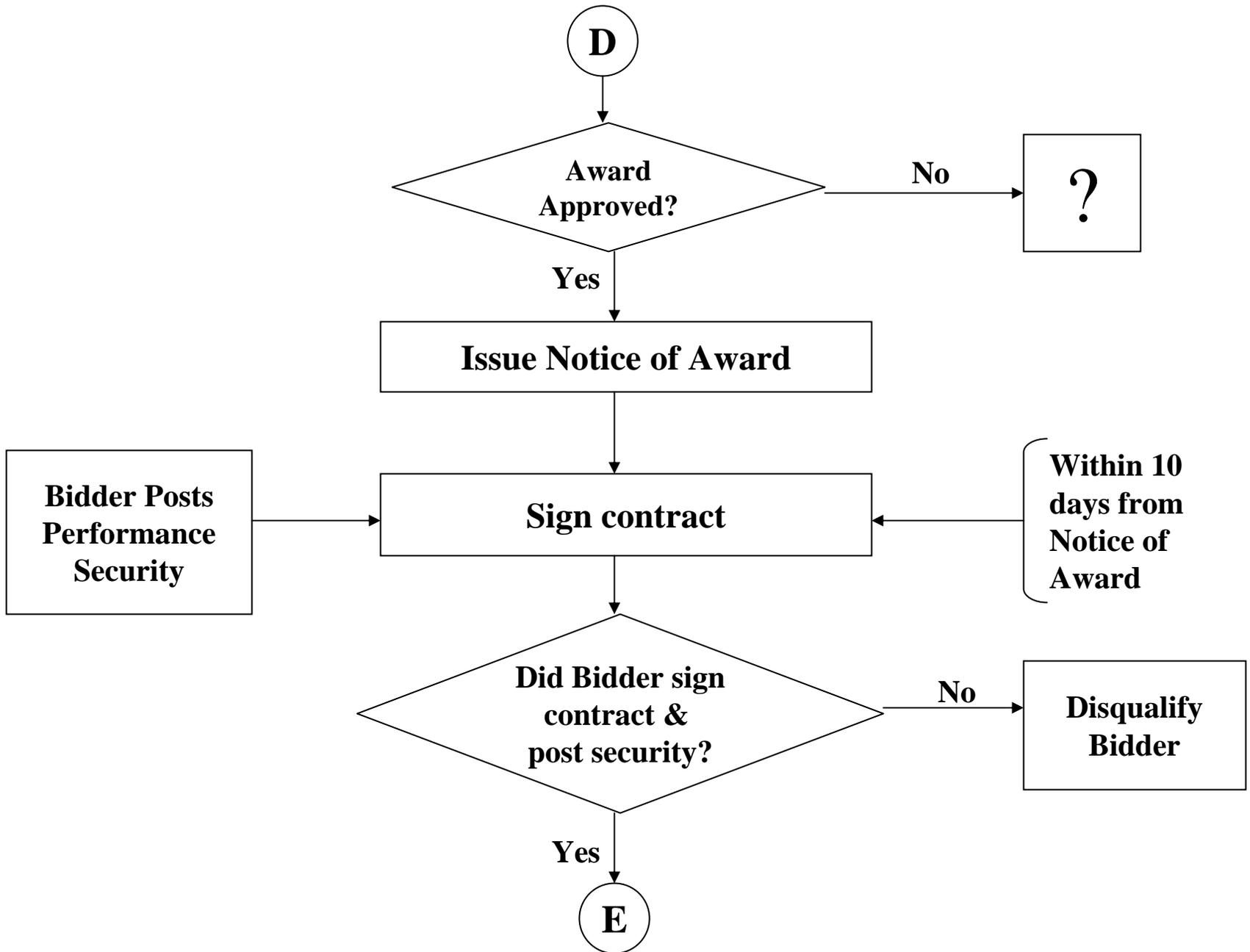
Bidders Submit Letter of Intent (LOI)

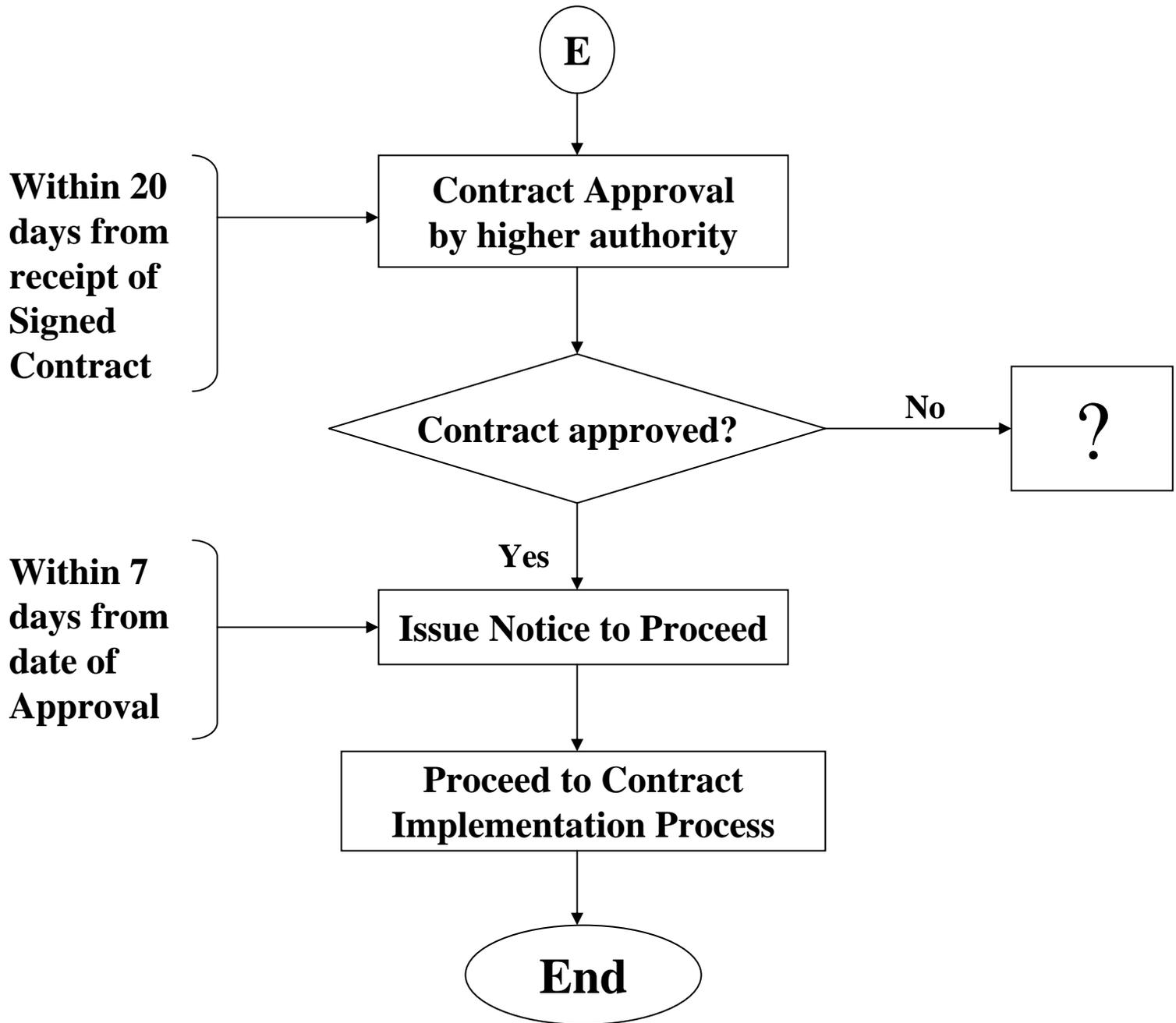
Eligibility check and short-listing shall not exceed 30 cal days











Various Methods of Procurement

- Conditions for Use of Alternative Methods
 1. BAC Recommendation (normally indicated in the APP)
 2. Prior approval of Head of Procuring Entity
 3. Justifying conditions in Secs. 48-54, Art. XVI, R.A. 9184

Various Methods of Procurement

- **Limited Source Bidding** – Direct invitation to pre-selected suppliers or consultants
- **Direct Contracting** – Submission of price quotations by selected supplier
- **Repeat Order** – Replenishment of goods within 6 mos. from previous winning bidder, not more than 25% of original quantity
- **Shopping** – Submission of price quotation from selected supplier for unforeseen contingency (P50T), or from 3 suppliers in case of ordinary/regular equipment not in PS (P250T)
- **Negotiated Procurement** – Direct negotiation w/ capable supplier, contractor or consultant

E-Procurement and the PhilGEPS

- Purpose of PhilGEPS is to promote transparency, efficiency and ICT
- Single portal that serves as the primary and definitive source of information on all gov't procurement (NGAs and LGUs)
- Shall be utilized for procurement of common-use goods (NGAs and LGUs)
- For non-common goods, infra and consulting services – Procuring entity may hire service providers, subject to requirements set by GPPB

E-Procurement and the PhilGEPS

- Features of the G-EPS
 - Electronic Bulletin Board
 - Posting of all agency procurement opportunities
 - Posting of bid awards and decisions
 - Supplier Registry
 - Database of registered suppliers
 - Electronic Catalogue
 - Electronic price list of commodities that can be acquired without bidding
 - Additional Features: Virtual Store, E-Payment, E-Bidding

Other Specialized Types of Procurement

- On Entity – Nationality Requirement for locally-funded projects
 - Goods: 60/40 Filipino Ownership (R.A. 5183)
 - Civil Works: 75/25 Filipino Ownership (LOI 630)
- On Goods – May be obtained from domestic and foreign source, but note 15% Domestic Preference (Flag Law) for locally-funded projects
 - Preference for Domestic Bidder (75/25 nationality)
 - Preference for Domestic Bid (goods substantially sourced from Philippines)

Other Specialized Types of Procurement

- Provincial Preference
 - For priority programs and infra projects funded out of GAA and intended for provincial implementation
 - Provincial bidder – principal office is within the same province
 - Lowest provincial bidder has right to match LCB/HRB, if made by an outside bidder
 - Only available within 5 years from effectivity of R.A. 9184

PHILIPPINES:
GENERIC PROCUREMENT
MANUALS

A Presentation for the Philippine
Government

Volume II

Manual of Procedures for the
Procurement of Goods and Services

Preparing for the Procurement of Goods and Services

- Factors to consider in planning procurement of Goods:
 1. Nature of the Goods to be procured
 - Common-use supplies
 - Inventory items
 - Non-common use supplies
 - Services
 2. Availability of Goods/Service in the Market
 3. Obsolescence, operation and maintenance of equipment/non-consumable Goods

Preparing for the Procurement of Goods and Services

- Technical Specifications – refers to the physical description of the Goods/ Services, as well as the Procuring Entity's requirements in terms of:
 - Functional Description
 - Performance Description
 - Environmental Interface
 - Design

Preparing for the Procurement of Goods and Services

- Factors to consider in Determining ABC:
 1. Cost or market price of the product or service
 2. Incidental expenses (freight, insurance, taxes, installation costs, training costs if necessary, cost of inspection)
 3. Cost of money (for agencies that usually buy on credit)
 4. Inflationary factor
 5. Quantities
 6. Supply of spare parts and/or maintenance services (if part of the contract package)

Preparing for the Procurement of Goods and Services

- Bidding Documents should define:
 1. Objectives, scope and expected outputs/results of contract
 2. Technical specifications of Goods to be procured
 3. Expected contract duration, est. quantity for goods, delivery schedule and time frame
 4. Obligations of winning bidder
 5. Minimum eligibility requirements of bidders

Preparing for the Procurement of Goods and Services

- Standard Bidding Documents (SBDs) contain the following:
 1. Invitation to Apply for Eligibility and to Bid
 2. Instructions to Bidders
 3. Bid Data Sheet
 4. General Conditions of Contract
 5. Special Conditions of Contract
 6. Schedule of Requirements
 7. Technical Specifications of the Goods
 8. Sample Forms

Preparing for the Procurement of Goods and Services

- Bid Security is a guarantee that the bidder will:
 - Not default in its offer; and
 - Enter into contract with procuring entity within ten (10) calendar days or less from receipt of the Notice of Award and furnish the Performance Security
- It must be submitted with every bid and must be operative on date of bid opening, payable to the procuring entity

Preparing for the Procurement of Goods and Services

Form of Bid Security	Amount
Cash, Certified/Cashier's/Manager's Check, Bank Draft	1% of ABC
Irrevocable LC	1% of ABC
Bank Guarantee	1 ½% of ABC
Surety Bond	2 ½% of ABC
Any Combination of the Foregoing	Total Amount not less than 2 ½% of ABC
Foreign Government Guarantee	100%

Preparing for the Procurement of Goods and Services

- Performance Security is a guarantee that the winning bidder will:
 - Perform its obligations under the contract in accordance with bidding documents
- It must be posted in favor of the procuring entity, and will be forfeited in the latter's favor in case of default

Preparing for the Procurement of Goods and Services

Form of Performance Security	Amount
Cash, Certified/Cashier's/Manager's Check, Bank Draft	5% of Contract Price
Irrevocable LC	5% of Contract Price
Bank Guarantee	10% of Contract Price
Surety Bond	30% of Contract Price
Any Combination of the Foregoing	Total Amount not less than 30% of Contract Price
Foreign Government Guarantee	100% of Contract Price

Preparing for the Procurement of Goods and Services

- Pre-Procurement Conference
 - Undertaken prior to Advertising of Invitation to Bid
 - To be attended by: BAC, Secretariat, consultants and relevant officials
 - General purpose: Determine readiness of procurement and criteria
 - Not required for Goods costing P2M & below, Infra. Projects costing P5M & below, and Consulting Services costing P1M & below

The Procurement Service

- PS-DBM was created under LOI 755
- All Procuring Entities are required to purchase common-use supplies from the PS-DBM
- It has the following functions:
 1. Identify goods which can be economically purchased through central procurement to be covered within its scope of activity
 2. Determine technical specifications of items it will procure for agencies
 3. Identify sources of supply for items procured by the government
 4. Purchase, warehouse and distribute items for resale to agencies
 5. Administer the PhilGEPS

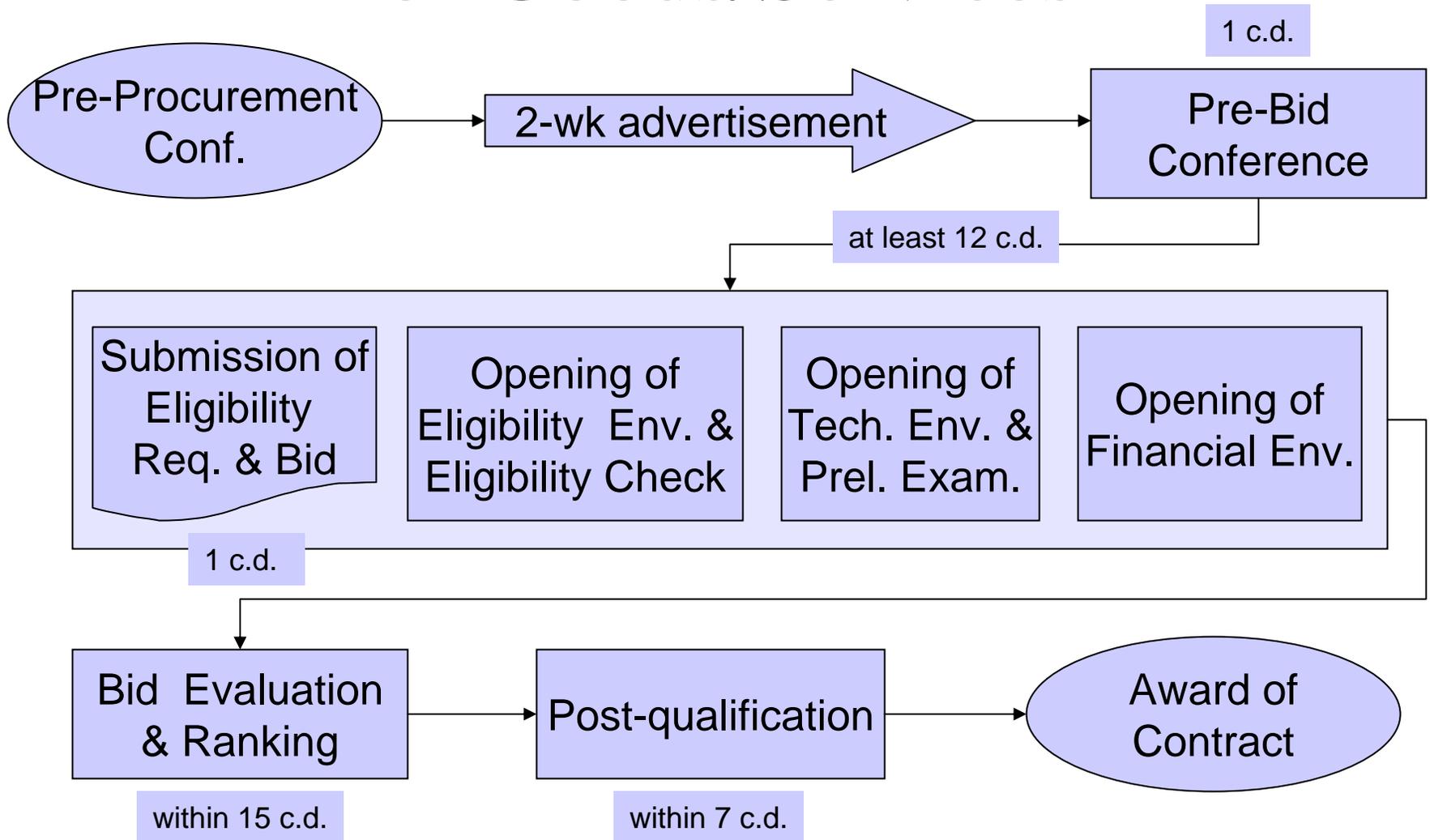
Procedural Steps for Procurement of Goods/Services

- Competitive Bidding
 - Method of procurement that is open to any interested and qualified party
 - Preferred over other methods of procurement
 - Procuring Entity should see to it that its procurement program allows enough time to conduct a public bidding

Procedural Steps for Procurement of Goods/Services

Single-Stage Bidding	Two-Stage Bidding
<p>Bidder simultaneously submits 3 sealed envelopes.</p> <p>1st – Eligibility Requirements</p> <p>2nd – Technical Proposal</p> <p>3rd – Financial Proposal</p>	<p>1st Stage – Prospective bidders submit their Eligibility Requirements and initial Technical Proposals (no price tenders)</p> <p>2nd Stage – Eligible bidders submit 2 sealed envelopes</p> <p>1st – Rev. Technical Proposal</p> <p>2nd – Financial Proposal</p>

Procedural Steps for Procurement of Goods/Services



Procedural Steps for Procurement of Goods/Services

- Contents of the IAEB:
 1. Name of contract & brief description of goods
 2. General statement on criteria for eligibility check, examination & evaluation of bids, & post-qualification
 3. Date, time & place for eligibility submission, pre-bid, bid submission and bid opening
 4. ABC
 5. Source of Funds
 6. Availability, place and price of bidding documents
 7. Contract duration or delivery schedules
 8. Contact information & contact person
 9. Reservation Clause
 10. Other necessary information

Procedural Steps for Procurement of Goods/Services

- Reservation Clause – Procuring Entity reserves the right to reject any and all bids, or not to award the contract. Grounds:
 - *Prima facie* evidence of collusion
 - BAC failed to follow prescribed bidding procedures (w/out prejudice to applicable sanctions)
 - Justifiable/Reasonable ground where contract will not redound to the benefit of the Government

Procedural Steps for Procurement of Goods/Services

- Justifiable/Reasonable grounds where contract will not redound to the benefit of the Government:
 1. Physical & economic conditions have significantly changed so that project is no longer economically, financially or technically feasible (as determined by Head of Procuring Entity)
 2. Project is no longer necessary (as determined by Head of Procuring Entity)
 3. Source of funds has been withheld or reduced through no fault of the Procuring Entity

Procedural Steps for Procurement of Goods/Services

- Setting the price for the Bidding Documents
 - Direct costs – includes development costs, reproduction costs, communication costs
 - Indirect costs – overhead, supervisions, administrative costs, honoraria
- The price of the Bidding Documents should not have an effect of discouraging competition

Procedural Steps for Procurement of Goods/Services

Advertising of IAEB

- Goods costing P2M and below:
 1. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 2. In the G-EPS
 3. In website of agency (if any) and its service provider (if any)

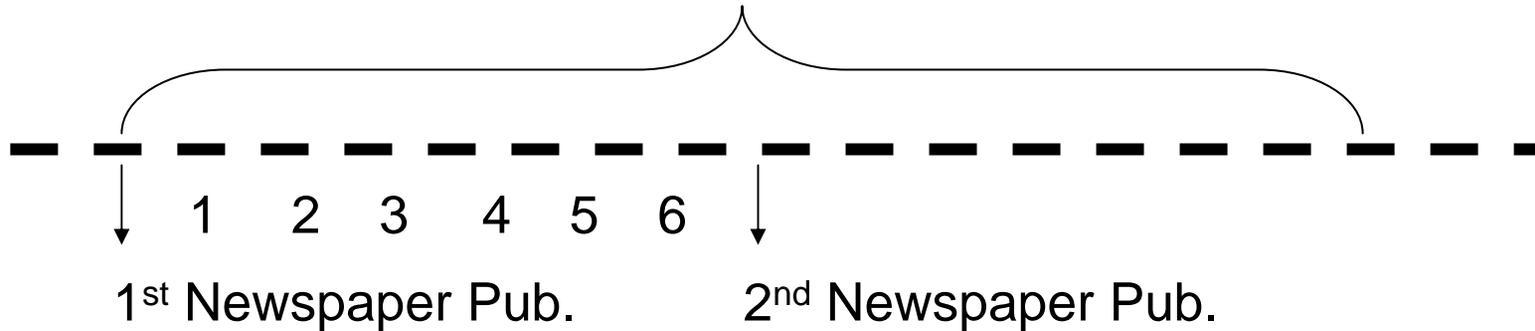
Procedural Steps for Procurement of Goods/Services

Advertising of IAEB

- Goods costing above P2M:
 1. **Newspaper Advertisement**
 2. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 3. In the G-EPS
 4. In website of agency (if any) and its service provider (if any)

Procedural Steps for Procurement of Goods/Services

2 Consecutive Weeks (14 c.d. max. pd)



*Only 1 newspaper of general nationwide circulation is required.

*For priority provincial projects, additional publication in a local newspaper of general circulation is discretionary.

Procedural Steps for Procurement of Goods/Services

- Pre-Bid Conference – Initial forum where the Procuring Entity’s representatives and the prospective bidders discuss the different aspects of the procurement at hand
- At least 1 required for bids with ABC of P1M or more
- Discretionary for bids costing less than P1M
- Held at least 12 c.d. before deadline for Submission of Bids

Procedural Steps for Procurement of Goods/Services

- Supplemental/Bid Bulletins – issued by BAC to answer requests for clarification or interpretation, and upon BAC’s initiative to clarify or modify any provision of Bidding Docs. (at least 7 c.d. before deadline for bids)
- Supplemental/Bid Bulletins posted in G-EPS and agency’s website, if any
- Bidders who have submitted bids before issuance of Supplemental/Bid Bulletin have to be informed in writing and allowed to modify or withdraw their respective bids

Procedural Steps for Procurement of Goods/Services

- The following are eligible to bid:
 1. Duly licensed Filipino citizens/sole proprietors
 2. Partnerships organized under Phil. laws with at least 60% Filipino ownership
 3. Corporations organized under Phil. laws with at least 60% Filipino Outstanding Capital Stock
 4. Joint Ventures with at least 60% Filipino ownership (subject to principle of “collective compliance)
 5. Cooperatives duly registered with the Cooperatives Development Authority

Procedural Steps for Procurement of Goods/Services

- Experience and Financial Requirements:
 1. Value of largest single similar contract completed w/in specified pd., adjusted to current prices using wholesale consumer price index, must be at least 50% of ABC
 2. Any of the following:
 - NFCC that is equal to the ABC
 - Computation: $NFCC = [(Current\ Assets - Current\ Liabilities) (K)] - value\ of\ all\ Outstanding\ Projects$
 - Commitment from licensed bank to extend a credit line specific to contract to be bid (10% of ABC)
 - Hold our on Cash Deposits issued by a licensed bank specific to contract to be bid (10% of ABC)

Procedural Steps for Procurement of Goods/Services

- Minimum Eligibility Requirements:
 - Class “A” Documents:
 - Legal Documents
 1. DTI/SEC Registration
 2. Mayor’s Permit
 3. TIN
 4. Statement of bidder that it is not “Blacklisted”
 5. Other appropriate licenses as may be required by the Procuring Entity

Procedural Steps for Procurement of Goods/Services

- Technical Documents – Statement of all ongoing and completed government and private contracts within specified period, including the following information:
 1. Whether ongoing, completed or awarded but not started
 2. Name of contract
 3. Date of contract
 4. Kinds of Goods sold
 5. Amount of contract and value of outstanding contracts
 6. Date of delivery
 7. End user's acceptance (for completed contracts)
 8. Specification of whether manufacturer, supplier or distributor
 9. Whether or not similar in nature and complexity

Procedural Steps for Procurement of Goods/Services

- Financial Documents:
 1. Audited Financial Statements, stamped “Received” by the BIR or accredited institution, for immediately preceding calendar year (showing total and current assets and liabilities)
 2. NFCC Computation/Credit Line/Certificate of Cash Deposit (for purpose of showing prospective bidder’s capacity to absorb the additional obligations in connection with the contract and to finance its implementation)

Procedural Steps for Procurement of Goods/Services

- Class “B” Documents:
 - Valid JVA
 - Letter authorizing the Head of the Procuring Entity or duly authorized representative to verify all Eligibility Documents submitted

Procedural Steps for Procurement of Goods/Services

- A prospective bidder that has previously submitted its Class “A” Documents, can simply submit:
 - BAC Certification that it has a complete and updated set of Class “A” Documents
 - Its Class “B” Documents
 - Its certification on authenticity

Procedural Steps for Procurement of Goods/Services

- Bid – A signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the Bidding Documents
- Period between last day of pd. for Advertising/Posting of Invitation to Bid and Opening of Bids: 30 c.d.
- Should be submitted on or before time & date of deadline for submission of bids stated in the IAEB
- 2 components of a Bid:
 1. Technical Proposal/Bid
 2. Financial Proposal/Bid

Procedural Steps for Procurement of Goods/Services

- Contents of the Technical Proposal:
 1. Bid Security
 2. Authority of Signatory
 3. Production/Delivery Schedule
 4. Manpower requirements
 5. After-sales service/parts, if applicable
 6. Technical specifications
 7. Credit line or cash deposit certificate of 10% of ABC
 8. Certificate of compliance with labor laws (Services)
 9. Affidavit of compliance with Disclosure Provision
 10. Affidavit on careful examination of bidding documents
 11. Other documents/materials stated in the ITB

Procedural Steps for Procurement of Goods/Services

- Contents of the Financial Proposal:
 1. Financial proposal submission sheet, which includes the bid prices, bill of quantities (Goods) or scope of work (Services), and applicable price schedules
 2. The recurring and maintenance costs, if applicable

Procedural Steps for Procurement of Goods/Services

- Preliminary Examination of Technical Proposal
 - Opening the Technical Envelopes which contain the Technical Proposals to ascertain compliance with the submission requirements
 - A non-discretionary “pass/fail” criteria shall be used
 - A checklist of required documents shall be used

Procedural Steps for Procurement of Goods/Services

- Preliminary Examination of Financial Proposal
 - Opening the Financial Envelopes of remaining eligible bidders whose Technical Proposals were rated “passed” to ascertain: (a) compliance with the submission requirements; and (b) that bid price does not exceed ABC
 - Only bids that pass prel. examination of both envelopes shall be rated “passed” and considered for evaluation and comparison
 - “Failed” bidder has 7 c.d. to file request for reconsideration. BAC has 7 c.d. to decide

Procedural Steps for Procurement of Goods/Services

- Evaluation of Bids
 - Purpose is to determine the Lowest Calculated Bid (LCB), by:
 1. Establishing correct calculated prices of bids; and
 2. Ranking calculated total bid prices from lowest to highest
 - A non-discretionary criteria shall be used, which shall include consideration of: (a) completeness of bids; and (b) minor arithmetical corrections

Procedural Steps for Procurement of Goods/Services

- Evaluation of Bids
 - **Prohibition on communication w/ bidders until award of contract**
 - Bid Evaluation shall not be more than 15 days
 - In case of discrepancies, the ff. shall prevail:
 - words over figures
 - unit prices over total prices
 - bill of quantities over detailed est.

Procedural Steps for Procurement of Goods/Services

- Evaluation of Bids
 - Unless the ITB specifically allows partial bids, those not providing all required items shall be considered non-responsive
 - Ex.: Placing no price for an item would be considered as non-responsive
 - But specifying a “0” or “-” (dash) for an item would mean it is being offered for free

Procedural Steps for Procurement of Goods/Services

- Evaluation of Bids
 - All bids shall be evaluate on equal footing to ensure fair and competitive bid evaluation
 - All bidders are required to include the cost of all taxes (VAT, income tax, local taxes) and other fiscal levies and duties, which should be itemized in the bid form and reflected in the detailed estimates

Procedural Steps for Procurement of Goods/Services

- Post-Qualification
 - To determine whether bidder with LCB complies with and is responsive to all requirements and conditions of eligibility and the bidding of the contract – to be declared the Lowest Calculated and Responsive Bid (LCRB)
 - A non-discretionary criteria shall be used to “Verify, Validate and Ascertain” all statements and documents
 - To be accomplished within 7 c.d. from determination of LCB

Procedural Steps for Procurement of Goods/Services

- Post-Qualification Criteria:
 1. Legal Requirements – Legal documents submitted by bidder as part of Eligibility Requirements
 2. Technical Requirements – Compliance of the goods and services with the requirements of the contract and bidding documents. Also includes the bidder's bid security, stated experience, after-sales or maintenance capabilities, plant/factory of a manufacturer
 3. Financial Requirements – Bid price proposal, NFCC computation, credit line or cash deposit certificate, to ensure that bidder can sustain the operating cash flow of the transaction

Procedural Steps for Procurement of Goods/Services

- Protest
 - Decisions of the BAC in all stages of the procurement may be protested in writing by the bidders to the Head of the Procuring Entity
 - Must be filed within 7 calendar days from the date the BAC issued a Resolution denying the Motion for Reconsideration
 - Head of Procuring Entity must resolve the Protest within 7 calendar days from receipt thereof

Procedural Steps for Procurement of Goods/Services

- Protest
 - Should not stay or delay the bidding process, but it must be resolved first before any award is made
 - Made by filing a Verified Position Paper containing the following:
 1. Name of Bidder
 2. Office Address
 3. Name of Project/Contract
 4. Implementing Agency
 5. Brief Statement of Facts
 6. Issue(s) to be resolved
 7. Other matters pertinent to the protest

Procedural Steps for Procurement of Goods/Services

- Protest
 - Protest must be accompanied by a Protest Fee of 1% of the ABC, which shall be non-refundable
 - Protests should be resolved strictly on the basis of the records of the BAC
 - Generally, the decisions of the Head of the Procuring Entity shall be final up to the limit of his contract approving authority
 - Court action may be resorted to only after the protest shall be have been completed and resolved with finality. Otherwise, it shall be dismissed for lack of jurisdiction

Procedural Steps for Procurement of Goods/Services

- Award of Contract
 - The contract shall be awarded to the bidder with the LCRB at its submitted price or calculated price, whichever is lower
 - Notice of Award should be issued by Head of Procuring Entity within 15 c.d. from date of determination of LCRB (30 c.d. for GOCCs)
 - Duration from opening of bids to award of contract, not to exceed 3 months

Procedural Steps for Procurement of Goods/Services

- A Single Calculated and Responsive Bid shall be considered for award if:
 1. After advertisement only 1 applies for eligibility
 2. More than 1 applies for eligibility but only 1 meets the requirements
 3. More than 1 meets the eligibility requirements but only 1 submits a bid
- ABC should reflect most advantageous prevailing price for the Government

Procedural Steps for Procurement of Goods/Services

- Contract Signing, Approval and Notice to Proceed
 - Both parties must sign the contract within 10 c.d. from receipt by the winning bidder of the Notice of Award
 - If further approval of a higher authority is required after contract signing, period of 20 c.d. (30 c.d. for GOCCs and GFIs) is given to approve or disapprove it. Otherwise it shall be deemed approved
 - Notice to Proceed should be issued together with a copy of the approved contract within 7 c.d. from date of approval of the contract

Alternative Methods of Procurement of Goods/Services

- Limited Source Bidding (Selective Bidding)
 - Involves issuance of a direct invitation to bid by Procuring Entity to a set of pre-selected suppliers with known experience and proven capability on the requirements of the contract
 - Conditions:
 - Only a few suppliers of the goods are known to be available (ex.: highly specialized types of goods)
 - Procurement of major plant components where it is deemed advantageous to limit bidding to known qualified bidders to maintain uniform quality and performance of the plant
 - There should be a list maintained by the relevant government authority, submitted to GPPB and posted in the G-EPS
 - Bid and Performance Securities are required

Alternative Methods of Procurement of Goods/Services

- Direct Contracting (Single Source Procurement)
 - Supplier is simply asked to submit a price quotation or pro-forma invoice together with the conditions of sale. Offer may be accepted immediately or after negotiation
 - Conditions:
 - Items of proprietary nature (ex.: patented items)
 - Critical plant components from a specific manufacturer, supplier or distributor as condition precedent to a guaranteed project performance
 - Exclusive dealer or manufacturer with no sub-dealers selling at lower prices and no suitable substitute at more advantageous terms
 - Although a performance security is not required, it is advisable

Alternative Methods of Procurement of Goods/Services

- Repeat Order
 - Procurement from previous winning bidder to replenish goods procured through Competitive Bidding. May be used to fill gaps due to unforeseen demands
 - Conditions:
 - Contract prices must be same or lower than original contract
 - Should not result in Splitting of Contracts, requisitions or P.O.s
 - Except when approved by GPPB, should be availed of within 6 months from date of issuance of original Notice to Proceed
 - Should not exceed 25% of quantity of each item in original contract, and must be part of contingency provided in APP
 - Although a performance security is not required, it is advisable when the value is above P50,000

Alternative Methods of Procurement of Goods/Services

- Shopping

- Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment from suppliers of known qualifications
- When allowed:
 - There is an unforeseen contingency requiring immediate purchase of Goods. Amount should not exceed P50,000 per transaction, and aggregate amount should not exceed maximum allowed in GAA
 - Ordinary or regular office supplies and equipment are not available in PS-DBM. Price should not exceed P250,000. Needs at least 3 price quotations from bona fide suppliers
- A performance security is not required, but may be advisable when the value is above P50,000

Alternative Methods of Procurement of Goods/Services

- Negotiated Procurement
 - Procuring Entity directly negotiates a contract with a legally, technically and financially capable supplier. It is advisable to have a registry of suppliers
 - When allowed:
 - There is a second failure of public bidding
 - There is imminent danger to life or property during a state of calamity, or time is of the essence
 - Purchase of Goods from another agency, such as PS-DBM
 - Upon prior approval by President, procurement of major defense equipment for use by AFP
 - Bid and Performance Securities are required

Contract Implementation for Goods/Services

- Warranty
 - To assure that supplier corrects manufacturing defects for a specific period after performance of contract
 - 3 mos. for supplies / 1 yr. for equipment
 - To be covered by either retention money equivalent to 10% of every progress payment, or special bank guarantee equivalent to 10% of total contract price

Contract Implementation for Goods/Services

- Amendment to Order
 - Any necessary adjustment within the general scope of the contract to fully meet the requirements of the project.
 - May cover:
 1. Drawings, design or specifications
 2. Method of shipment or packing
 3. Place of delivery
 4. Place of performance of the service
 5. Additional items needed for protection of the Goods
 6. Any other change affecting specifications or scope of work

Contract Implementation for Goods/Services

- Amendment to Order
 - Any of the following may serve as basis:
 1. Unforeseen contingencies (ex.: changes in conditions affecting the project, time is of the essence, additional requirements to protect Goods)
 2. Contract does not reflect the real intention of the parties due to mistake or accident
 3. Other analogous circumstances that affect the conditions of the procurement
 - Corresponding increase/decrease in contract price may be allowed, but it is suggested that increase should not exceed 10% of original contract price

Contract Implementation for Goods/Services

- Suspension of Delivery
 - Procuring Entity may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period, as it deems necessary due to fortuitous event, as defined in the contract
 - When warranted appropriate adjustments may be made in the delivery/contract schedule, price, or both

Contract Implementation for Goods/Services

- Delays in Delivery
 - If delays are likely to be incurred, the supplier must notify the procuring entity in writing, stating the cause/s and duration of the expected delay
 - Procuring Entity may grant time extensions at its discretion, based on meritorious grounds, with or without liquidated damages

Contract Implementation for Goods/Services

- Liquidated Damages
 - When supplier fails to deliver the Goods or services within specified schedule, inclusive of duly granted time extensions, if any, supplier is liable for damages for the delay and should pay liquidated damages, not by way of penalty, for every day of delay until performance and acceptance
 - Procuring Entity need not prove it incurred actual damages
 - Amount is 1/10 of 1% of the cost of the delayed Goods or services scheduled for delivery or performance for every day of delay
 - If sum of liquidated damages reach 10% of the contract amount, contract shall automatically be rescinded by Procuring Entity

Contract Implementation for Goods/Services

- Termination for Default
 - By written Notice of Default Contract may be terminated in whole or in part, as follows:
 1. Outside of Force Majeure or after receipt of cessation of Force Majeure, the Supplier fails to perform at least 10% of the contract price within period specified (in latter case, period is 60 c.d.)
 2. The Supplier fails to perform any other obligation under the contract

Contract Implementation for Goods/Services

- Termination for Default
 - Procuring Entity may procure the remaining undelivered goods from 3rd parties. Supplier shall be liable for any excess costs
 - If delay is more than 10% of the specified contract time plus any time extension, the Procuring entity may terminate the contract, forfeit the Supplier's Performance Security and award to another Bidder

Contract Implementation for Goods/Services

- Termination for Insolvency
 - Terminate through written Notice if Supplier becomes bankrupt or otherwise insolvent (as declared with finality by a court of competent jurisdiction)
 - In this event, termination will be without compensation to the Supplier, provided such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Supplier

Contract Implementation for Goods/Services

- Termination for Convenience
 - Through Notice in writing, Contract may be terminated in whole or in part, at any time for convenience by Head of Procuring Entity if:
 - He has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in law and government policies
 - Other grounds:
 - If physical and economic conditions have significantly changes rendering project no longer eco., fin. or tech. feasible
 - Funding for project as been withheld or reduced by higher authorities through no fault of Procuring Entity
 - Analogous circumstances

Contract Implementation for Goods/Services

- Termination for Convenience
 - Conditions
 1. Goods that are complete and ready for shipment within thirty (30) days after receipt of the Notice shall be received by the Procuring Entity
 2. For the remaining goods, Procuring Entity may elect:
 - To have any portion completed and delivered at Contract terms and prices
 - To cancel the remainder and pay the Supplier an agreed amount for partially completed goods and services and parts previously procured by the Supplier

Contract Implementation for Goods/Services

- Termination for Unlawful Acts
 - Procuring Entity may terminate Contract in case of *prima facie* evidence that Supplier has engaged, before or during Contract implementation in unlawful acts relative to contract acquisition and implementation, such as:
 - Corrupt, Fraudulent, Collusive and Coercive Practices
 - Drawing up or using forged documents
 - Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade
 - Analogous circumstances

PHILIPPINES:
GENERIC PROCUREMENT
MANUALS

A Presentation for the Philippine
Government

Volume III

Manual of Procedures for the
Procurement of Infrastructure
Projects

Preparing for the Procurement of Infrastructure Projects

- For Infrastructure Projects, the APP shall consider the appropriate timing/phasing of related project activities such as engineering design and acquisition of ROW to reduce/lower project costs
- Detailed Engineering
 - No bidding and award should be made unless the detailed engineering investigations, surveys and designs, including acquisition of ROW have been carried out
 - Exception: design and build schemes

Preparing for the Procurement of Infrastructure Projects

- Detailed Engineering work includes:
 1. Design standards – in accordance with appropriate standards and accepted detailed engineering practice adopted by the agency
 2. Field Surveys and Investigations – which may include aerial, hydrographic, topographic, hydrologic, sub-surface, monumenting and other surveys, to be carried out in accordance with the design guidelines, criteria and standards adopted by the agency
 3. Contract plants – incorporating the site development plan, plans and profile sheet, typical sections and details, drainage details where applicable, structural plans, and other details which may be required

Preparing for the Procurement of Infrastructure Projects

4. Quantities – shall be computed to a reasonable accuracy of plus or minus 10%
5. Special provisions – prepared for specific items of work or methods of construction, measurement and payment, not covered by standard construction and material specifications adopted by the agency
6. Unit prices – using costs based on reasonable approved current prices, projected over the proposed construction period
7. ABC – which should provide for projected movements in construction costs over the period
8. Bidding Documents
9. Program of Work – including estimates of the work, items, quantities, costs and a PERT/CPM network of project activities

Preparing for the Procurement of Infrastructure Projects

- Factors to consider in Determining ABC:
 1. Cost or market price of the service
 2. Incidental expenses (taxes, training costs if necessary, cost of inspection)
 3. Cost of money (for agencies that usually buy on credit)
 4. Inflationary factor

Preparing for the Procurement of Infrastructure Projects

- Bidding Documents should define:
 1. Objectives, scope and expected outputs/results of contract
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 6. Specifications
 7. Drawings
 8. Bill of Quantities
 9. Forms and Qualification Information

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- Bid Security is a guarantee that the bidder will:
 - Not default in its offer; and
 - Enter into contract with procuring entity within ten (10) calendar days or less from receipt of the Notice of Award and furnish the Performance Security
- It must be submitted with every bid and must be operative on date of bid opening, payable to the procuring entity

Preparing for the Procurement of Infrastructure Projects

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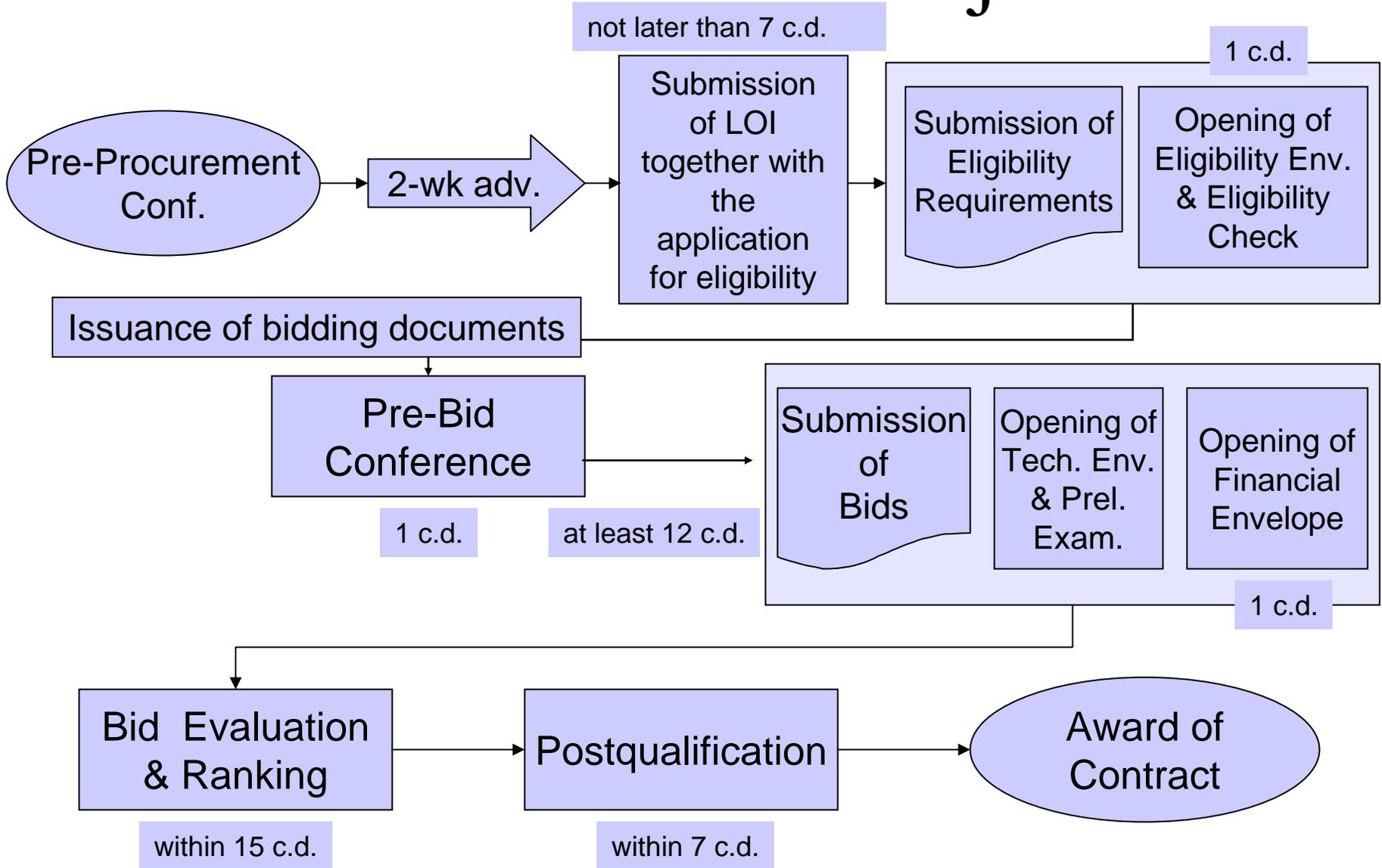
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Procedural Steps for Procurement of Infrastructure Projects



Procedural Steps for Procurement of Infrastructure Projects

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 2. Project background
 3. General statement on criteria for eligibility check, examination & evaluation of bids, & post-qualification
 4. Date, time & place for submission of LOI, eligibility submission and notification, pre-bid, bid submission and bid opening
 5. ABC
 6. Source of Funds
 7. Period of availability of eligibility documents
 8. Contract duration
 9. Contact information & contact person
 10. Reservation Clause
 11. Other necessary information

Procedural Steps for Procurement of Infrastructure Projects

- Reservation Clause – Procuring Entity reserves the right to reject any and all bids, or not to award the contract. Grounds:
 - *Prima facie* evidence of collusion
 - BAC failed to follow prescribed bidding procedures (w/out prejudice to applicable sanctions)
 - Justifiable/Reasonable ground where contract will not redound to the benefit of the Government

Procedural Steps for Procurement of Infrastructure Projects

- Justifiable/Reasonable grounds where contract will not redound to the benefit of the Government:
 1. Physical & economic conditions have significantly changed so that project is no longer economically, financially or technically feasible (as determined by Head of Procuring Entity)
 2. Project is no longer necessary (as determined by Head of Procuring Entity)
 3. Source of funds has been withheld or reduced through no fault of the Procuring Entity

Procedural Steps for Procurement of Infrastructure Projects

Advertising of IAEB

- Projects costing P5M and below:
 1. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 2. In the G-EPS
 3. In website of agency (if any) and its service provider (if any)

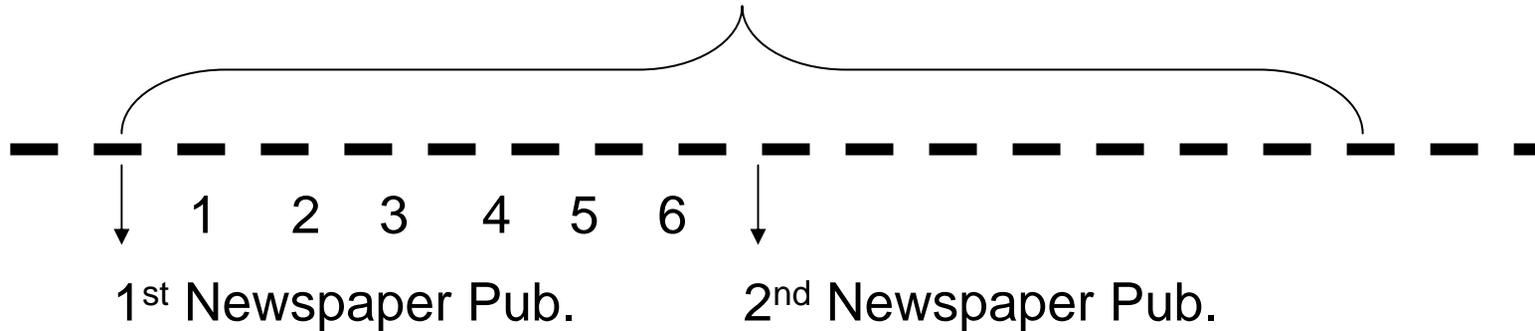
Procedural Steps for Procurement of Infrastructure Projects

Advertising of IAEB

- Projects costing above P5M:
 1. **Newspaper Advertisement**
 2. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 3. In the G-EPS
 4. In website of agency (if any) and its service provider (if any)

Procedural Steps for Procurement of Infrastructure Projects

2 Consecutive Weeks (14 c.d. max. pd)



*Only 1 newspaper of general nationwide circulation is required.

*For priority provincial projects, additional publication in a local newspaper of general circulation is discretionary.

Procedural Steps for Procurement of Infrastructure Projects

- Letter of Intent (LOI)
 - Prospective bidders should submit their LOIs and Applications for Eligibility to the BAC and have these received not later than 7 c.d. after the last day of period for advertising/posting IAEB
 - Eligibility forms must be released by the BAC to a prospective bidder immediately upon its receipt of the LOIs and Applications for Eligibility

Procedural Steps for Procurement of Infrastructure Projects

- The following are eligible to bid:
 1. Duly licensed Filipino citizens/sole proprietors
 2. Partnerships organized under Phil. laws with at least 75% Filipino ownership
 3. Corporations organized under Phil. laws with at least 75% Filipino Outstanding Capital Stock
 4. Joint Ventures with at least 75% Filipino ownership (subject to principle of “collective compliance)
 5. Cooperatives duly registered with the Cooperatives Development Authority

Procedural Steps for Procurement of Infrastructure Projects

- Experience and Financial Requirements:
 1. PCAB Registration
 2. Value of largest single similar contract, adjusted to current prices using NSO consumer price indices, must be at least 50% of ABC. Exception: Contractors under Small A & B categories w/out similar experience are allowed to bid if cost of contract to be bid is not more than 50% of Allowable Range of Contract Cost (ARCC) of his registration
 3. Constructors' Performance Evaluation System (CPES) rating that is satisfactory and/or a certificate of completion and owner's acceptance of the contract

Procedural Steps for Procurement of Infrastructure Projects

- Experience and Financial Requirements:
 4. Any of the following:
 - NFCC that is equal to the ABC
 - Computation: $NFCC = [(Current\ Assets - Current\ Liabilities) (K)] - value\ of\ all\ Outstanding\ Projects$
 - Commitment from licensed bank to extend a credit line specific to contract to be bid (10% of ABC)
 - Hold our on Cash Deposits issued by a licensed bank specific to contract to be bid (10% of ABC)

Procedural Steps for Procurement of Infrastructure Projects

- Minimum Eligibility Requirements:
 - Class “A” Documents:
 - Legal Documents
 1. DTI/SEC Registration
 2. Mayor’s Permit
 3. TIN
 4. Statement of bidder that it is not “Blacklisted”
 5. Other appropriate licenses as may be required by the Procuring Entity

Procedural Steps for Procurement of Infrastructure Projects

- Technical Documents
 1. Statement of all ongoing and completed government and private contracts within specified period, including the following information:
 - a. Whether ongoing, completed or awarded but not started
 - b. Name and location of contract
 - c. Date of award of contract
 - d. Contract duration
 - e. Owner's name and address
 - f. Nature of work
 - g. Contractor's role (whether sole contractor, sub-contractor or partner)
 - h. Total contract value at award
 - i. Date of completion or estimated completion time
 - j. Total contract value at completion, if applicable

Procedural Steps for Procurement of Infrastructure Projects

- Technical Documents
 - k. Percentage of planned and actual accomplishments, if applicable
 - l. Value of outstanding works, if applicable
 - m. Supporting notices of award and/or notices to proceed
 - n. Supporting CPES rating sheets, and/or certificate of completion and owner's acceptance, if applicable
 - o. Whether the contract is similar or not in nature and complexity
- 2. Valid PCAB license and registration for the type and cost of contract to be bid (for JVs, the license and registration must be those of the JV, not any of its members)
- 3. Statement on:
 - a. Availability of key personnel
 - b. Availability of equipment that it owns, has under lease, and/or under purchase agreements

Procedural Steps for Procurement of Infrastructure Projects

- Financial Documents:
 1. Audited Financial Statements, stamped “Received” by the BIR or accredited institution, for immediately preceding calendar year (showing total and current assets and liabilities)
 2. NFCC Computation/Credit Line/Certificate of Cash Deposit (for purpose of showing prospective bidder’s capacity to absorb the additional obligations in connection with the contract and to finance its implementation)

Procedural Steps for Procurement of Infrastructure Projects

- Class “B” Documents:
 - Valid JVA
 - Letter authorizing the Head of the Procuring Entity or duly authorized representative to verify all Eligibility Documents submitted

Procedural Steps for Procurement of Infrastructure Projects

- A prospective bidder that has previously submitted its Class “A” Documents, can simply submit:
 - BAC Certification that it has a complete and updated set of Class “A” Documents
 - Its Class “B” Documents
 - Its certification on authenticity

Procedural Steps for Procurement of Infrastructure Projects

- Setting the price for the Bidding Documents
 - Direct costs – includes development costs, reproduction costs, communication costs
 - Indirect costs – overhead, supervisions, administrative costs, honoraria
- The price of the Bidding Documents should not have an effect of discouraging competition

Procedural Steps for Procurement of Infrastructure Projects

- Pre-Bid Conference – Initial forum where the Procuring Entity’s representatives and the prospective bidders discuss the different aspects of the procurement at hand
- At least 1 required for bids with ABC of P1M or more
- Discretionary for bids costing less than P1M
- Held at least 12 c.d. before deadline for Submission of Bids

Procedural Steps for Procurement of Infrastructure Projects

- Supplemental/Bid Bulletins – issued by BAC to answer requests for clarification or interpretation, and upon BAC’s initiative to clarify or modify any provision of Bidding Docs. (at least 7 c.d. before deadline for bids)
- Supplemental/Bid Bulletins posted in G-EPS and agency’s website, if any
- Bidders who have submitted bids before issuance of Supplemental/Bid Bulletin have to be informed in writing and allowed to modify or withdraw their respective bids

Procedural Steps for Procurement of Infrastructure Projects

- Bid – A signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the Bidding Documents
- Should be submitted on or before time & date of deadline for submission of bids stated in the IAEB
- 2 components of a Bid:
 1. Technical Proposal/Bid
 2. Financial Proposal/Bid

Procedural Steps for Procurement of Infrastructure Projects

- Contents of the Technical Proposal:
 1. Bid Security
 2. Authority of Signatory
 3. Construction Schedule and S-curve
 4. Manpower schedule
 5. Construction methods, including arrangements for subcontracting portions of the works, if any
 6. Organizational chart for the contract (not of the firm)
 7. List of contractor's key personnel
 8. List of contractor's equipment units for the contract

Procedural Steps for Procurement of Infrastructure Projects

- Contents of the Technical Proposal:
 9. Equipment utilization schedule
 10. Affidavit of site inspection from contractor
 11. Credit line or cash deposit certificate of 10% of ABC
 12. Construction safety and health program of contractor
 13. Certificate of compliance with labor laws
 14. Affidavit of compliance with Disclosure Provision
 15. Affidavit on careful examination of bidding docs.
 16. Other documents/materials stated in the ITB

Procedural Steps for Procurement of Infrastructure Projects

- Contents of the Financial Proposal:
 1. Bid prices in the Bill of Quantities in the prescribed Bid Form
 2. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used, indicating also the direct and indirect costs
 3. Cash flow by the quarter and payments schedule

Procedural Steps for Procurement of Infrastructure Projects

- Preliminary Examination of Technical Proposal
 - Opening the Technical Envelopes which contain the Technical Proposals to ascertain compliance with the submission requirements
 - A non-discretionary “pass/fail” criteria shall be used
 - A checklist of required documents shall be used

Procedural Steps for Procurement of Infrastructure Projects

- Preliminary Examination of Financial Proposal
 - Opening the Financial Envelopes of remaining eligible bidders whose Technical Proposals were rated “passed” to ascertain: (a) compliance with the submission requirements; and (b) that bid price does not exceed ABC
 - Only bids that pass prel. examination of both envelopes shall be rated “passed” and considered for evaluation and comparison
 - “Failed” bidder has 7 c.d. to file request for reconsideration. BAC has 7 c.d. to decide

Procedural Steps for Procurement of Infrastructure Projects

- Evaluation of Bids
 - Purpose is to determine the Lowest Calculated Bid (LCB), by:
 1. Establishing correct calculated prices of bids; and
 2. Ranking calculated total bid prices from lowest to highest
 - A non-discretionary criteria shall be used, which shall include consideration of: (a) completeness of bids; and (b) minor arithmetical corrections

Procedural Steps for Procurement of Infrastructure Projects

- Evaluation of Bids
 - **Prohibition on communication w/ bidders until award of contract**
 - Bid Evaluation shall not be more than 15 days
 - In case of discrepancies, the ff. shall prevail:
 - words over figures
 - unit prices over total prices
 - bill of quantities over detailed est.

Procedural Steps for Procurement of Infrastructure Projects

- Evaluation of Bids
 - Unless the ITB specifically allows partial bids, those not providing all required items shall be considered non-responsive
 - Ex.: Placing no price for an item would be considered as non-responsive
 - But specifying a “0” or “-” (dash) for an item would mean it is being offered for free

Procedural Steps for Procurement of Infrastructure Projects

- Evaluation of Bids
 - All bids shall be evaluate on equal footing to ensure fair and competitive bid evaluation
 - All bidders are required to include the cost of all taxes (VAT, income tax, local taxes) and other fiscal levies and duties, which should be itemized in the bid form and reflected in the detailed estimates

Procedural Steps for Procurement of Infrastructure Projects

- Post-Qualification
 - To determine whether bidder with LCB complies with and is responsive to all requirements and conditions of eligibility and the bidding of the contract – to be declared the Lowest Calculated and Responsive Bid (LCRB)
 - A non-discretionary criteria shall be used to “Verify, Validate and Ascertain” all statements and documents
 - To be accomplished within 7 c.d. from determination of LCB

Procedural Steps for Procurement of Infrastructure Projects

- Post-Qualification Criteria:
 1. Legal Requirements – Legal documents submitted by bidder as part of Eligibility Requirements
 2. Technical Requirements – Compliance of the infrastructure project it offered with the requirements of the contract and bidding documents. Also includes the bidder's bid security, equipment units, bidder's performance (note negative slippage of at least 15%)
 3. Financial Requirements – Bid price proposal, NFCC computation, credit line or cash deposit certificate, to ensure that bidder can sustain the operating cash flow of the transaction

Procedural Steps for Procurement of Infrastructure Projects

- Protest
 - Decisions of the BAC in all stages of the procurement may be protested in writing by the bidders to the Head of the Procuring Entity
 - Must be filed within 7 calendar days from the date the BAC issued a Resolution denying the Motion for Reconsideration
 - Head of Procuring Entity must resolve the Protest within 7 calendar days from receipt thereof

Procedural Steps for Procurement of Infrastructure Projects

- Protest
 - Should not stay or delay the bidding process, but it must be resolved first before any award is made
 - Made by filing a Verified Position Paper containing the following:
 1. Name of Bidder
 2. Office Address
 3. Name of Project/Contract
 4. Implementing Agency
 5. Brief Statement of Facts
 6. Issue(s) to be resolved
 7. Other matters pertinent to the protest

Procedural Steps for Procurement of Infrastructure Projects

- Protest
 - Protest must be accompanied by a Protest Fee of 1% of the ABC, which shall be non-refundable
 - Protests should be resolved strictly on the basis of the records of the BAC
 - Generally, the decisions of the Head of the Procuring Entity shall be final up to the limit of his contract approving authority
 - Court action may be resorted to only after the protest shall be have been completed and resolved with finality. Otherwise, it shall be dismissed for lack of jurisdiction

Procedural Steps for Procurement of Infrastructure Projects

- Award of Contract
 - The contract shall be awarded to the bidder with the LCRB at its submitted price or calculated price, whichever is lower
 - Notice of Award should be issued by Head of Procuring Entity within 15 c.d. from date of determination of LCRB (30 c.d. for GOCCs)
 - Duration from opening of bids to award of contract, not to exceed 3 months

Procedural Steps for Procurement of Infrastructure Projects

- A Single Calculated and Responsive Bid shall be considered for award if:
 1. After advertisement only 1 submits an LOI and/or applies for eligibility
 2. More than 1 submits an LOI and/or applies for eligibility and submits but only 1 meets the requirements
 3. More than 1 meets the eligibility requirements but only 1 submits a bid
- ABC should reflect most advantageous prevailing price for the Government

Procedural Steps for Procurement of Infrastructure Projects

- Contract Signing, Approval and Notice to Proceed
 - Both parties must sign the contract within 10 c.d. from receipt by the winning bidder of the Notice of Award
 - If further approval of a higher authority is required after contract signing, period of 20 c.d. (30 c.d. for GOCCs and GFIs) is given to approve or disapprove it. Otherwise it shall be deemed approved
 - Notice to Proceed should be issued together with a copy of the approved contract within 7 c.d. from date of approval of the contract

Alternative Methods of Procurement of Infra. Projects

- Negotiated Procurement
 - Procuring Entity directly negotiates a contract with a legally, technically and financially capable contractor. It is advisable to have a registry of contractors
 - When allowed:
 - There is a second failure of public bidding
 - There is imminent danger to life or property during a state of calamity, or time is of the essence
 - Take over of contracts
 - Adjacent or contiguous contract
 - Bid and Performance Securities are required

Alternative Methods of Procurement of Infra. Projects

- Negotiated Procurement
 - Conditions for undertaking a project through administration of force account:
 1. Project should not cost more than P2M
 2. Implementing agency should own the tools and construction equipment, or when owned by another agency, it should have access to these
 3. Prior approval of the Head of the Procuring Entity

Alternative Methods of Procurement of Infra. Projects

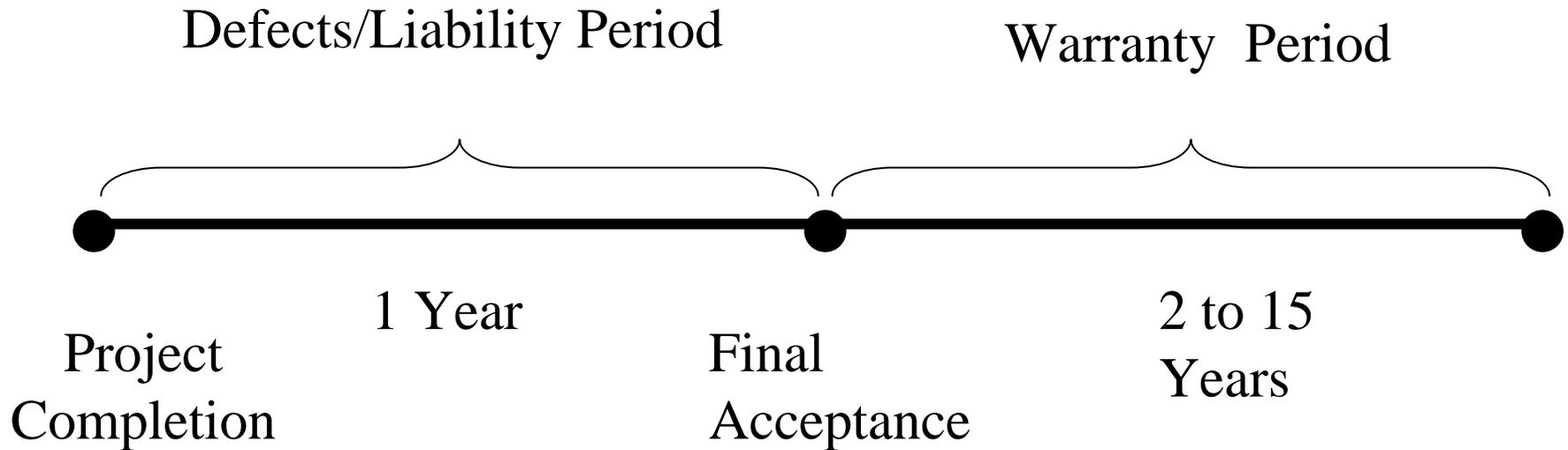
- Negotiated Procurement
 - Conditions on *pakyaw* contracts on labor component of projects by administration:
 1. Maximum capital outlay of P500T
 2. Public bidding with at least 3 *pakyaw* groups, each complying with the following:
 - a. It is not a regular licensed contractor; and
 - b. It is drawn from the vicinity of the project or belongs to various Barangay Associations contiguous to the site
 3. Unskilled labor drawn from the Barangay where project is located; semi-skilled labor recruited within Municipality (preferably within Barangay); skilled labor recruited within Province (preferably within Barangay)

Contract Implementation for Infrastructure Projects

- Warranty
 - To assure that contractor assumes full responsibility for the work (except *force majeure*) for a specific period after final acceptance of project
 - To be covered by warranty security in form of cash, bank guarantee, LC, callable GSIS or surety bond in an amount equal to % of total contract price
 - In case of defect or damage b/c of inferior materials, contractor shall undertake repair w/in 90 days from order by Procuring Entity. In case of refusal, Gov't shall undertake repair, subject to full reimbursement

Contract Implementation for Infrastructure Projects

- Warranty Period:



Contract Implementation for Infrastructure Projects

- Warranty
- After final acceptance of the project by the Government, the contractor shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties:
 1. Permanent Structures: Fifteen (15) years. Buildings of types 4 and 5, steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures

Contract Implementation for Infrastructure Projects

- Warranty
 2. Semi-Permanent Structures: Five (5) years. Building types 1, 2 and 3, concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and
 3. Other Structures: Two (2) years. Bailey and wooden bridges, shallow wells, spring development, and other similar structures.

Contract Implementation for Infrastructure Projects

- Warranty
- In cases where structural defects and/or failure arise during the warranty period, the following persons/parties shall be held liable:
 - a. Contractor – where structural defects and/or failure arise due to faults attributable to improper construction use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable;
 - b. Consultants – where structural defects and/or failures arise due to faulty and/or inadequate design and specifications as well as construction supervision, then the consultant who prepared the design or undertook construction supervision for the project shall be held liable;

Contract Implementation for Infrastructure Projects

- Warranty
 - c. Procuring Entity's Representatives/Project Manager/Construction Managers and supervisors – the project owner's representative/s project manager, construction managers, and supervisor/s shall be held liable in cases where the structural defects/failures are due to his/their willful intervention in altering the designs and other specifications; negligence or omission in not approving or acting on proposed changes to noted defects or deficiencies in the design and/or specifications; and the use of substandard construction materials in the project;

Contract Implementation for Infrastructure Projects

- Warranty
 - d. Third Parties – Third Parties shall be held liable in cases where structural defects/failure are caused by work undertaken by them such as leaking pipes, diggings/excavations, underground cables and electrical wires, underground tunnel, mining shaft and the like, in which case the applicable warranty to such structure should be levied to third parties for their construction or restoration works.
 - e. Users – in cases where structural defects/failures are due to abuse/misuse by the end user of the constructed facility and/or non-compliance by a user with the technical design limits and/or intended purpose of the same, then the user concerned shall be held liable

Contract Implementation for Infrastructure Projects

- Warranty
 - The term “Structural Defects” shall mean major faults/flaws/deficiencies in one or more key structural elements of the completed elements of the project which may lead to structural failure of the completed elements or structure
 - The term “Structural Failures” is defined as an occurrence where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public

Contract Implementation for Infrastructure Projects

- Variation Orders – are change orders or extra work orders which should not exceed 10% of the original project cost
 - Variation Orders beyond 10% shall either be subjected to another contract to be bid if the works are separable from the original contract or if urgently necessary to complete the original scope of work, be authorized by the head of the procuring entity but not more than 20% subject to guidelines by GPPB, but with appropriate sanctions to the designer, consultant or official responsible for the original design
 - Supplemental Agreement is no longer allowed

Contract Implementation for Infrastructure Projects

- Suspension of Work
 - Procuring Entity has authority to suspend work wholly or partly by written order due to following:
 1. Force Majeure or Fortuitous Event
 2. Failure of contractor to: (a) correct bad conditions; (b) carry out valid order; or (c) perform any provisions of the contract
 3. Adjustment of plans to suit field conditions
 - Contract time may be extended but only when the total suspension along the critical path is not due to contractor's fault
 - No payment should be made to contractor for any standby time expense, except for justifiable reasons and prior clearance from Head of Procuring Entity

Contract Implementation for Infrastructure Projects

- Suspension of Work
 - Contractor may suspend work when:
 1. There are ROW problems
 2. Requisite construction plans are not issued
 3. Peace and order conditions make it extremely dangerous
 4. Failure of Procuring Entity to deliver government-furnished materials and equipment
 5. Delay in payment of contractor's claim for progress billings beyond 45 c.d., except when there are justifiable reasons which are communicated in writing to the contractor

Contract Implementation for Infrastructure Projects

- Liquidated Damages
 - When contractor fails to satisfactorily complete the works within the specified duration, plus any time duly granted extension, and is thus considered in default, it is liable for damages for the delay and should pay liquidated damages, not by way of penalty, for every day of delay until performance and acceptance
 - Procuring Entity need not prove it incurred actual damages
 - Amount is as provided in Annex “E” of IRR-A
 - If sum of liquidated damages reach 10% of the contract amount, contract shall automatically be rescinded by Procuring Entity

Contract Implementation for Infrastructure Projects

- Termination for Default
 - By written Notice of Default Contract may be terminated in whole or in part, as follows:
 1. Due to contractor's fault and while project is on-going, it has incurred negative slippage of 15% or more
 2. Due to contractor's fault and after time has expired, it has incurred a negative slippage of 10% or more
 3. Contractor: (a) abandons the works; (b) does not have minimum essential equipment on site; (c) does not execute the works; (d) neglects/refuses to remove materials or perform new work when rejected; or (e) sub-lets without approval of the Procuring Entity

Contract Implementation for Infrastructure Projects

- Termination for Insolvency
 - Terminate through written Notice if Contractor becomes bankrupt or otherwise insolvent (as declared with finality by a court of competent jurisdiction)
 - In this event, termination will be without compensation to the Contractor, provided such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Contractor

Contract Implementation for Infrastructure Projects

- Termination for Convenience
 - Through Notice in writing, Contract may be terminated in whole or in part, at any time for convenience by Head of Procuring Entity if:
 - He has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in law and government policies
 - Other grounds:
 - If physical and economic conditions have significantly changes rendering project no longer eco., fin. or tech. feasible
 - Funding for project as been withheld or reduced by higher authorities through no fault of Procuring Entity
 - Failure of the Procuring Entity to acquire ROW
 - Analogous circumstances

Contract Implementation for Infrastructure Projects

- Termination for Unlawful Acts
 - Procuring Entity may terminate Contract in case of *prima facie* evidence that Contractor has engaged, before or during Contract implementation in unlawful acts relative to contract acquisition and implementation, such as:
 - Corrupt, Fraudulent, Collusive and Coercive Practices
 - Drawing up or using forged documents
 - Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade
 - Analogous circumstances

PHILIPPINES:
GENERIC PROCUREMENT
MANUALS

A Presentation for the Philippine
Government

Volume IV

Manual of Procedures for the
Procurement of Consulting Services

Preparing for the Procurement of Consulting Services

- Factors to consider in Determining ABC:
 1. Cost or market price of the service
 2. Cost of money (for agencies that usually buy on credit)
 3. Inflationary factor

Preparing for the Procurement of Consulting Services

- Computing the Cost of Consultancy – based on cost to the consultant of actual services to be rendered plus a reasonable level of management fee. It consists of:
 1. Remuneration Cost – paid to the consultant’s staff who are directly engaged in the service per manning schedule. Consists of:
 - a. Basic Rates
 - b. Billing Factor or Multiplier
 - Overhead Cost
 - Social Charges
 - Management Fee

Preparing for the Procurement of Consulting Services

2. Reimbursable Costs – includes all other expenses associated with the execution of the service. May be classified into:
 - a. Based on Agreed Fixed Rates – paid to the staff and includes:
 - Housing Allowance
 - Per Diems
 - For foreign consultants – misc. int’l travel expenses
 - b. Based on Actual Cost – supported with invoices
 - International Travel, Domestic Travel, Domestic Transportation, Communication Expenses, Office/Engineering Suppliers, Field Office, Equipment Rental, Software Licenses, Other necessary items
 - c. Contingency

Preparing for the Procurement of Consulting Services

- Bidding Documents should define:
 1. Objectives, scope and expected outputs/results of contract
 2. Expected contract duration
 3. Obligations of winning bidder
 4. Minimum eligibility requirements of bidders

Preparing for the Procurement of Consulting Services

- Standard Bidding Documents (SBDs) contain the following:
 1. Invitation to Apply for Eligibility and to Bid
 2. Letter of Invitation to Bid
 3. Instructions to Consultants
 4. Proposal Data Sheet
 5. General Conditions of Contract
 6. Special Conditions of Contract
 7. Technical Proposal – Standard Forms
 8. Financial Proposal – Standard Forms
 9. Terms of Reference
 10. Financial Negotiations

Preparing for the Procurement of Consulting Services

- Bid Security is a guarantee that the bidder will:
 - Not default in its offer; and
 - Enter into contract with procuring entity within ten (10) calendar days or less from receipt of the Notice of Award and furnish the Performance Security
- It must be submitted with every bid and must be operative on date of bid opening, payable to the procuring entity

Preparing for the Procurement of Consulting Services

Form of Bid Security	Amount
Cash, Certified/Cashier's/Manager's Check, Bank Draft	1% of ABC
Irrevocable LC	1% of ABC
Bank Guarantee	1 ½% of ABC
Surety Bond	2 ½% of ABC
Any Combination of the Foregoing	Total Amount not less than 2 ½% of ABC

Preparing for the Procurement of Consulting Services

- Performance Security is a guarantee that the winning bidder will:
 - Perform its obligations under the contract in accordance with bidding documents
- It must be posted in favor of the procuring entity, and will be forfeited in the latter's favor in case of default

Preparing for the Procurement of Consulting Services

Form of Performance Security	Amount
Cash, Certified/Cashier's/Manager's Check, Bank Draft	5% of Contract Price
Irrevocable LC	5% of Contract Price
Bank Guarantee	10% of Contract Price
Surety Bond	30% of Contract Price
Any Combination of the Foregoing	Total Amount not less than 30% of Contract Price

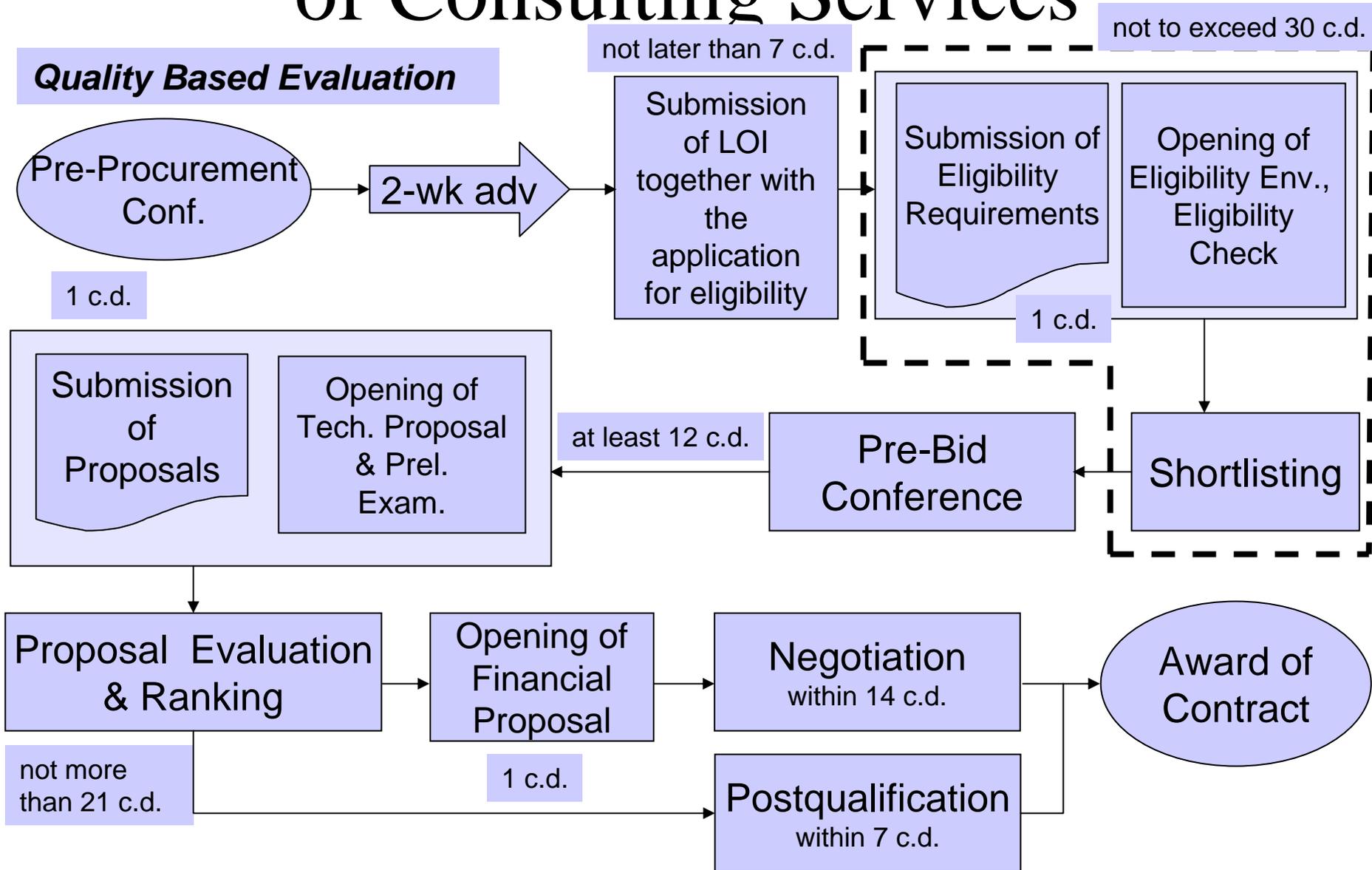
Preparing for the Procurement of Consulting Services

- Pre-Procurement Conference
 - Undertaken prior to Advertising of Invitation to Bid
 - To be attended by: BAC, Secretariat, consultants and relevant officials
 - General purpose: Determine readiness of procurement and criteria
 - Not required for Goods costing P2M & below, Infra. Projects costing P5M & below, and Consulting Services costing P1M & below

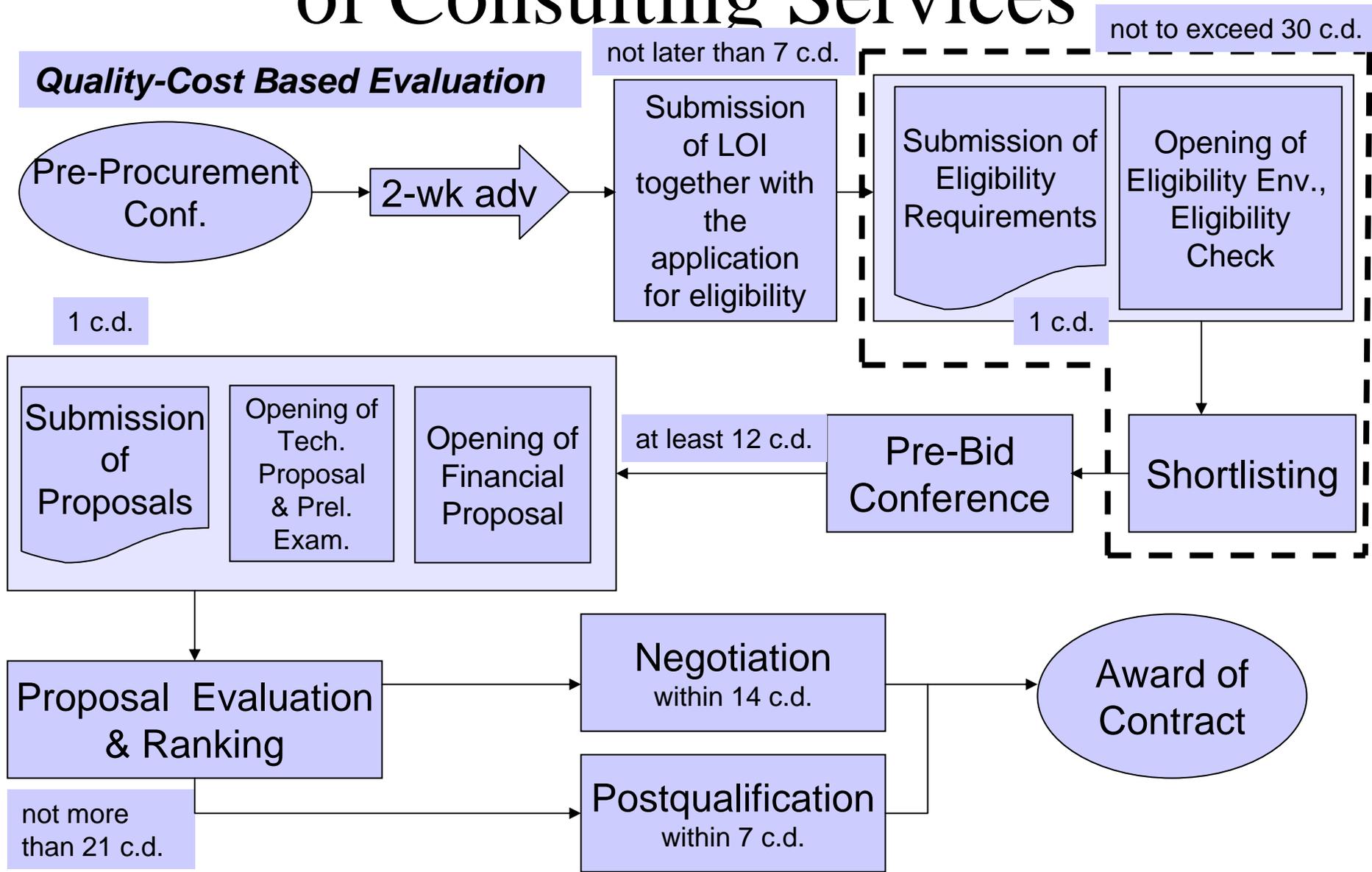
Procedural Steps for Procurement of Consulting Services

- Competitive Bidding
 - Method of procurement that is open to any interested and qualified party
 - Preferred over other methods of procurement
 - Procuring Entity should see to it that its procurement program allows enough time to conduct a public bidding

Procedural Steps for Procurement of Consulting Services



Procedural Steps for Procurement of Consulting Services



Procedural Steps for Procurement of Consulting Services

- Contents of the IAEB:
 1. Name of contract and general description of project
 2. General statement on criteria for eligibility check and shortlisting
 3. Nature of Evaluation process (whether QBE or QCBE)
 4. Weights for the technical & financial (for QCBE) proposals
 5. Number of firms to be included in shortlist
 6. Date, time & place for submission of LOI, eligibility and shortlisting requirements, pre-bid, bid submission and opening
 7. ABC
 8. Source of Funds
 9. Period of availability of eligibility documents
 10. Contract duration
 11. Contact information & contact person
 12. Reservation Clause
 13. Other necessary information

Procedural Steps for Procurement of Consulting Services

- Reservation Clause – Procuring Entity reserves the right to reject any and all bids, or not to award the contract. Grounds:
 - *Prima facie* evidence of collusion
 - BAC failed to follow prescribed bidding procedures (w/out prejudice to applicable sanctions)
 - Justifiable/Reasonable ground where contract will not redound to the benefit of the Government

Procedural Steps for Procurement of Consulting Services

- Justifiable/Reasonable grounds where contract will not redound to the benefit of the Government:
 1. Physical & economic conditions have significantly changed so that project is no longer economically, financially or technically feasible (as determined by Head of Procuring Entity)
 2. Project is no longer necessary (as determined by Head of Procuring Entity)
 3. Source of funds has been withheld or reduced through no fault of the Procuring Entity

Procedural Steps for Procurement of Consulting Services

Advertising of IAEB

- Projects costing P1M and below and/or those with durations of 4 mos. or less:
 1. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 2. In the G-EPS
 3. In website of agency (if any) and its service provider (if any)

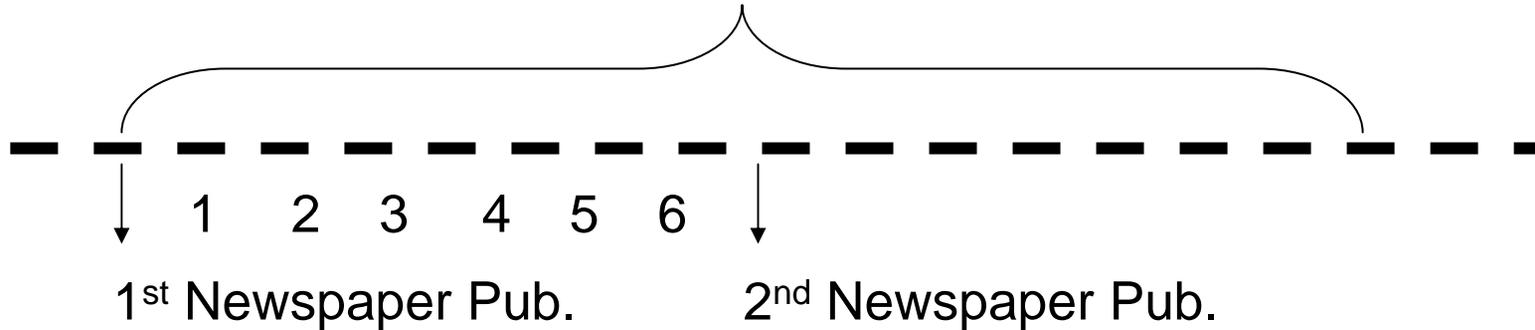
Procedural Steps for Procurement of Consulting Services

Advertising of IAEB

- Projects costing above P1M and/or those with durations of more than 4 mos.:
 1. **Newspaper Advertisement**
 2. In a conspicuous place in the agency premises – certified by head of BAC Secretariat
 3. In the G-EPS
 4. In website of agency (if any) and its service provider (if any)

Procedural Steps for Procurement of Consulting Services

2 Consecutive Weeks (14 c.d. max. pd)



*Only 1 newspaper of general nationwide circulation is required.

*For priority provincial projects, additional publication in a local newspaper of general circulation is discretionary.

Procedural Steps for Procurement of Consulting Services

- Letter of Intent (LOI)
 - Prospective bidders should submit their LOIs and Applications for Eligibility to the BAC and have these received not later than 7 c.d. after the last day of period for advertising/posting IAEB
 - Eligibility forms must be released by the BAC to a prospective bidder immediately upon its receipt of the LOIs and Applications for Eligibility

Procedural Steps for Procurement of Consulting Services

- Consultants may be hired if:
 - The services to be provided are beyond the capability of the Procuring Entity, because it does not have the expertise or it could not devote enough time to the work; and
 - The services to be provided would not be inconsistent with the Government's policy of not competing with the private sector

Procedural Steps for Procurement of Consulting Services

- Nationality of Consultants:
 - Filipino consultants should be hired if required expertise, experience and capability are available
 - If not, foreign consultants may be hired but are required to associate with Filipino consultants

Procedural Steps for Procurement of Consulting Services

- The following are considered Filipino consultants:
 1. Duly licensed Filipino citizens/sole proprietors
 2. Partnerships organized under Phil. laws with at least 60% Filipino ownership
 3. Corporations organized under Phil. laws with at least 60% Filipino Outstanding Capital Stock
 4. Joint Ventures with at least 60% Filipino ownership (subject to principle of “collective compliance)
- Entity must be registered/authorized to engage in the type of consulting service for the project
- When it involves professions regulated by Philippine laws, the consultant, owner, key staff, all partners, or all SH and directors, as the case may be, should be duly registered and authorized

Procedural Steps for Procurement of Consulting Services

- Types of Consulting Services:
 1. Advisory and Review Services
 2. Pre-Investment or Feasibility Studies
 3. Design
 - Pre-Design Phase
 - Basic Design Phase
 - Support Services During Construction
 4. Construction Supervision
 5. Management and Related Services
 6. Other Technical Services or Special Studies

Procedural Steps for Procurement of Consulting Services

- Minimum Eligibility Requirements:
 - Class “A” Documents:
 - Legal Documents
 1. DTI/SEC Registration
 2. Mayor’s Permit
 3. TIN
 4. Statement of bidder that it is not “Blacklisted”
 5. Other appropriate licenses as may be required by the Procuring Entity

Procedural Steps for Procurement of Consulting Services

- Technical Documents
 1. Statement of all ongoing and completed government and private contracts within specified period, including the following information:
 - a. Name and location of the contract/project
 - b. Date of the contract
 - c. Type of consulting service
 - d. Amount of contract
 - e. Contract duration
 - f. Copies of all certificates of satisfactory completion issued by clients for completed projects
 2. Types and number of equipment consultant owns, is leasing and/or has under purchase agreements
 3. Statement showing information on compliance with rules on nationality and authority/registration to undertake the service

Procedural Steps for Procurement of Consulting Services

- Financial Documents:
Audited Financial Statements, stamped “Received” by the BIR or accredited institution, for immediately preceding calendar year (showing total and current assets and liabilities)

Procedural Steps for Procurement of Consulting Services

- Class “B” Documents:
 - Valid JVA
 - Letter authorizing the Head of the Procuring Entity or duly authorized representative to verify all Eligibility Documents submitted

Procedural Steps for Procurement of Consulting Services

- A prospective bidder that has previously submitted its Class “A” Documents, can simply submit:
 - BAC Certification that it has a complete and updated set of Class “A” Documents
 - Its Class “B” Documents
 - Its certification on authenticity

Procedural Steps for Procurement of Consulting Services

- Example of Short listing Criteria and Weights:
 - Applicable experience of Consultants **30%**
 - Qualification of personnel to be assigned to the job (education, work experience, number of years in firm, etc.) **50%**
 - Job capacity **20%**

Procedural Steps for Procurement of Consulting Services

- Setting the price for the Bidding Documents
 - Direct costs – includes development costs, reproduction costs, communication costs
 - Indirect costs – overhead, supervisions, administrative costs, honoraria
- The price of the Bidding Documents should not have an effect of discouraging competition

Procedural Steps for Procurement of Consulting Services

- Pre-Bid Conference – Initial forum where the Procuring Entity’s representatives and the prospective bidders discuss the different aspects of the procurement at hand
- At least 1 required for bids with ABC of P1M or more
- Discretionary for bids costing less than P1M
- Held at least 12 c.d. before deadline for Submission of Bids

Procedural Steps for Procurement of Consulting Services

- Supplemental/Bid Bulletins – issued by BAC to answer requests for clarification or interpretation, and upon BAC’s initiative to clarify or modify any provision of Bidding Docs. (at least 7 c.d. before deadline for bids)
- Supplemental/Bid Bulletins posted in G-EPS and agency’s website, if any
- Bidders who have submitted bids before issuance of Supplemental/Bid Bulletin have to be informed in writing and allowed to modify or withdraw their respective bids

Procedural Steps for Procurement of Consulting Services

- Bid – A signed offer or proposal to undertake a contract submitted by a bidder in response to, and in consonance with, the requirements stated in the Bidding Documents
- Should be submitted on or before time & date of deadline for submission of bids stated in the IAEB
- 2 components of a Bid:
 1. Technical Proposal/Bid
 2. Financial Proposal/Bid

Procedural Steps for Procurement of Consulting Services

- Contents of the Technical Proposal:
 1. Bid Security
 2. Authority of Signatory
 3. Organizational chart for the contract
 4. List of completed and on-going projects
 5. Approach, work plan, and schedule (for architectural design, submission of architectural plans and designs are not required)
 6. List of key personnel to be assigned to the contract
 7. Certificate of compliance with labor laws
 8. Affidavit of compliance with Disclosure Provision
 9. Affidavit on careful examination of bidding docs.
 10. Other information/documents stated in the Bidding Documents

Procedural Steps for Procurement of Consulting Services

- Contents of the Financial Proposal:
 1. Remuneration cost indicating basic salary, overhead cost, social charges, management fee and billing rate
 2. Reimbursable cost
 3. Other items as may be required in the Bidding Documents

Procedural Steps for Procurement of Consulting Services

- Preliminary Examination of Technical Proposal
 - Opening the Technical Envelopes which contain the Technical Proposals to ascertain compliance with the submission requirements
 - A non-discretionary “pass/fail” criteria shall be used
 - A checklist of required documents shall be used

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - After Preliminary Examination of Technical Proposals, BAC conducts Detailed Evaluation of the Technical Proposals
 - Purpose is to determine the Highest Rated Bid (HRB), by:
 1. Detailed evaluation of bids of short listed consultants using numerical ratings based on the Quality-Based Evaluation (QBE) or Quality-Cost Based Evaluation procedure(QCBE); and
 2. Ranking of bidders based on numerical ratings from highest to lowest

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - QBE
 - Simultaneous submission of both Technical and Financial proposals in separate sealed envelopes
 - Considers only the Technical Proposals in the ranking of consultants
 - Considered as 2-Stage Procedure, where Technical proposals shall be evaluated first and the consultants ranked, before the Financial Proposal of the bidder with the HRB is opened
 - First-in-rank consultant shall be invited for contract and financial negotiations

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - QCBE
 - Ranking is based both on the Technical and Financial Proposals
 - Technical and Financial proposals are given corresponding weights
 - The weights of both the Technical and financial criteria may be determined in the pre-bid conference, and together should be equivalent to 100%

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - QBE is applied for:
 1. Complex or highly specialized assignments for which it is difficult to precisely define the TOR and the required inputs from the consultants
 2. Assignment can be carried out in substantially different ways, such that the proposals are not comparable
 - QCBE is applied in all other cases

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - Bids are rated numerically. This is done either
 - Individually – Each BAC member assigns numerical rates to a proposal (ranging from 1 to 100), these rates are tabulated, and then the highest and lowest rates are disregarded. This step is done to remove the possibility of 1 BAC member unduly influencing the results of the bidding
 - Collegially – The BAC members evaluate the proposals, deciding as a group. The rate obtained by a proposal is the consensus of the BAC members involved in the evaluation

Procedural Steps for Procurement of Consulting Services

EVALUATOR	FIRM 1	FIRM 2	FIRM 3	FIRM 4	FIRM 5
A	95	75	84	83	84
B	84	88	86	81	82
C	84	86	85	79	84
D	83	85	84	79	82
E	84	87	86	80	83
AVERAGE (5E)	86.0	84.2	85.0	80.4	83.0
RANK	1	3	2	5	4
AVERAGE (3E)	84	86	85	80	83
RANK	3	1	2	5	4

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - Example of Bases of Technical Evaluation:
 - Quality of Personnel 10%
 - Experience and Capability of the Consultant 30%
 - Plan of Approach and Methodology 60%
 - Note: The BAC shall assign numerical weights to each of the above criteria indicated in the bidding documents

Procedural Steps for Procurement of Consulting Services

- Evaluation of Bids
 - **Prohibition on communication w/ bidders until award of contract**
 - Bid Evaluation shall not be more than 21 c.d.
 - BAC shall disqualify a consultant if:
 - It provides for a required item but does not indicate a price for its, but if it specifies a “0” or dash for an item, this would mean it is being offered for free
 - Its corrected price exceeds the ABC

Procedural Steps for Procurement of Consulting Services

- Negotiation shall cover:
 1. Discussion and clarification of the TOR
 2. Discussion and finalization of the methodology and work program
 3. Consideration of the qualifications of personnel and their compensation
 4. Discussion on the facilities and date to be provided by the procuring entity
 5. Discussion of the Financial Proposal (not applicable for QCBE)
 6. Provisions of the ensuing Contract
- Except for meritorious reasons, negotiations with any 1 consultant should be done within 14 c.d.

Procedural Steps for Procurement of Consulting Services

- Post-Qualification
 - To determine whether bidder with HRB complies with and is responsive to all requirements and conditions of eligibility and the bidding of the contract – to be declared the Highest Rated and Responsive Bid (HRRB)
 - A non-discretionary criteria shall be used to “Verify, Validate and Ascertain” all statements and documents
 - To be accomplished within 7 c.d. from determination of HRB

Procedural Steps for Procurement of Consulting Services

- Post-Qualification Criteria:
 1. Legal Requirements – Legal documents submitted by bidder as part of Eligibility Requirements
 2. Technical Requirements – Compliance of the consulting services it offered with the requirements of the contract and bidding documents. Also includes the bidder's bid security, competence, experience, the competence and experience of its key personnel, and list of on-going projects
 3. Financial Requirements – Covers the audited financial statement, income tax returns and financial proposal

Procedural Steps for Procurement of Consulting Services

- Protest
 - Decisions of the BAC in all stages of the procurement may be protested in writing by the bidders to the Head of the Procuring Entity
 - Must be filed within 7 calendar days from the date the BAC issued a Resolution denying the Motion for Reconsideration
 - Head of Procuring Entity must resolve the Protest within 7 calendar days from receipt thereof

Procedural Steps for Procurement of Consulting Services

- Protest
 - Should not stay or delay the bidding process, but it must be resolved first before any award is made
 - Made by filing a Verified Position Paper containing the following:
 1. Name of Bidder
 2. Office Address
 3. Name of Project/Contract
 4. Implementing Agency
 5. Brief Statement of Facts
 6. Issue(s) to be resolved
 7. Other matters pertinent to the protest

Procedural Steps for Procurement of Consulting Services

- Protest
 - Protest must be accompanied by a Protest Fee of 1% of the ABC, which shall be non-refundable
 - Protests should be resolved strictly on the basis of the records of the BAC
 - Generally, the decisions of the Head of the Procuring Entity shall be final up to the limit of his contract approving authority
 - Court action may be resorted to only after the protest shall be have been completed and resolved with finality. Otherwise, it shall be dismissed for lack of jurisdiction

Procedural Steps for Procurement of Consulting Services

- Award of Contract
 - The contract shall be awarded to the bidder with the HRRB at its submitted price or calculated price, whichever is lower. In the case of QBE, the award shall be based on the negotiated price or submitted price, whichever is lower
 - Notice of Award should be issued by Head of Procuring Entity within 15 c.d. from date of determination of HRRB (30 c.d. for GOCCs)
 - Duration from opening of bids to award of contract, not to exceed 3 months

Procedural Steps for Procurement of Consulting Services

- A Single Calculated and Responsive Bid shall be considered for award if:
 1. After advertisement only 1 submits an LOI and/or applies for eligibility
 2. More than 1 submits an LOI and/or applies for eligibility and submits but only 1 meets the requirements
 3. More than 1 meets the eligibility requirements but only 1 submits a bid
- ABC should reflect most advantageous prevailing price for the Government

Procedural Steps for Procurement of Consulting Services

- Contract Signing, Approval and Notice to Proceed
 - Both parties must sign the contract within 10 c.d. from receipt by the winning bidder of the Notice of Award
 - If further approval of a higher authority is required after contract signing, period of 20 c.d. (30 c.d. for GOCCs and GFIs) is given to approve or disapprove it. Otherwise it shall be deemed approved
 - Notice to Proceed should be issued together with a copy of the approved contract within 7 c.d. from date of approval of the contract

Alternative Methods of Procurement of Services

- Limited Source Bidding (Selective Bidding)
 - Involves issuance of a direct invitation to bid by Procuring Entity to a set of pre-selected consultants with known experience and proven capability on the requirements of the contract
 - May be used to procure highly-specialized types of consulting services, as determined by the Procuring Entity, where only a few consultants are known to be available
 - There should be a list maintained by the relevant government authority, submitted to GPPB and posted in the G-EPS
 - Bid and Performance Securities are required

Alternative Methods of Procurement of Services

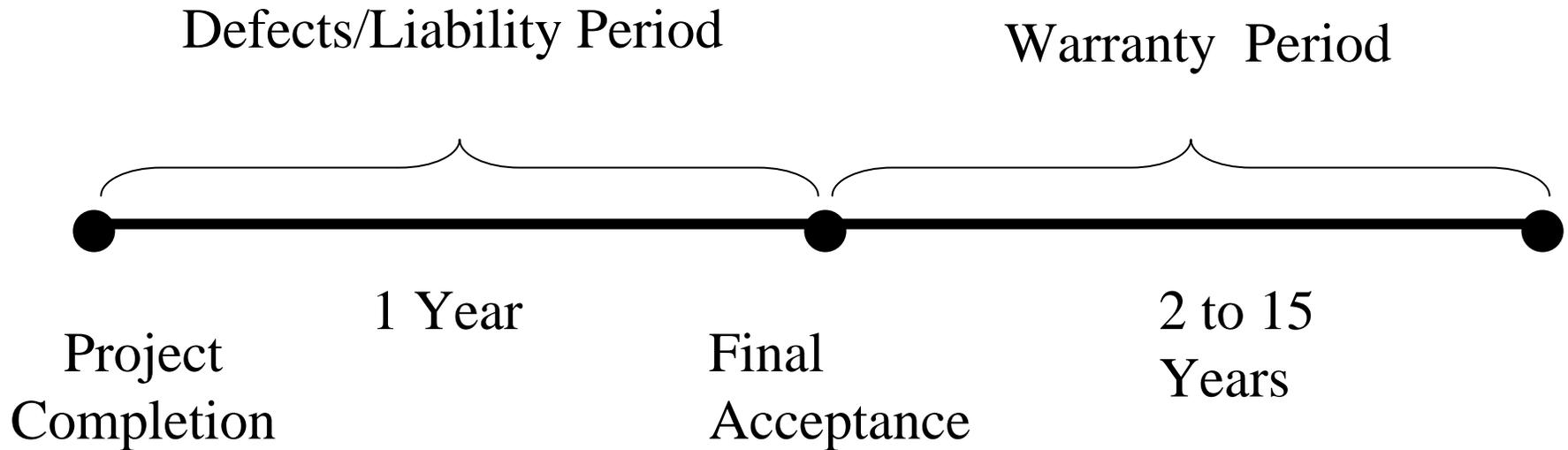
- Negotiated Procurement
 - Procuring Entity directly negotiates a contract with a legally, technically and financially capable consultant. It is advisable to have a registry of contractors
 - When allowed:
 - There is a second failure of public bidding
 - There is imminent danger to life or property during a state of calamity, or time is of the essence
 - Take over of contracts
 - Adjacent or contiguous contract
 - Individual consultant is hired for work that is highly technical or proprietary, or primarily confidential or policy-determining
 - Bid and Performance Securities are required, except when hiring individual consultants or in case of imminent danger

Contract Implementation for Consulting Services

- Warranty
 - To assure that the consultant who prepared the design or undertook construction supervision for the project shall be held liable when structural defects and/or failures arise during applicable period due to faulty and/or inadequate design and specifications as well as construction supervision
 - May also be incorporated for other consulting services, as mutually agreed upon
 - To be covered by warranty security in form of cash, bank guarantee, LC, callable GSIS or surety bond in an amount equal to % of total contract price

Contract Implementation for Consulting Services

- Warranty Period:



Contract Implementation for Consulting Services

- Warranty
- After final acceptance of an infrastructure project by the Government, the consultant may be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties:
 1. Permanent Structures: Fifteen (15) years. Buildings of types 4 and 5, steel and concrete bridges, flyovers, concrete aircraft movement areas, ports, dams, diversion tunnels, causeways, wharves, piers, dikes, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar structures

Contract Implementation for Consulting Services

- Warranty
 2. Semi-Permanent Structures: Five (5) years. Building types 1, 2 and 3, concrete roads, asphalt roads, river control, drainage, irrigation and drainage canals, municipal ports and river landing, deep wells, rock causeway, pedestrian overpass, and other similar structures; and
 3. Other Structures: Two (2) years. Bailey and wooden bridges, shallow wells, spring development, and other similar structures.

Contract Implementation for Consulting Services

- Warranty
 - The term “Structural Defects” shall mean major faults/flaws/deficiencies in one or more key structural elements of the completed elements of the project which may lead to structural failure of the completed elements or structure
 - The term “Structural Failures” is defined as an occurrence where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public

Contract Implementation for Consulting Services

- Suspension of Work
 - Procuring Entity may by written notice suspend all payments if consultant fails to perform any of its obligations due to its own fault or to *force majeure*, provided that the notice shall:
 1. Specify the nature of the failure; and
 2. Request the consultant to remedy such failure within a period not exceeding 30 days after receipt of such notice
 - Contract time may be extended but only when the total suspension along the critical path is not due to contractor's fault

Contract Implementation for Consulting Services

- Suspension of Work
 - Consultant may suspend work when:
 1. Failure of Procuring Entity to deliver government-furnished equipment, resources, reports or data
 2. Peace and order conditions make it extremely dangerous
 3. Delay in payment of consultant's claim for progress billings beyond 45 c.d., except when there are justifiable reasons which are communicated in writing to the consultant

Contract Implementation for Consulting Services

- Liquidated Damages
 - When consultant fails to satisfactorily complete the works within the specified duration, plus any time duly granted extension, and it is liable for damages for the delay and should pay liquidated damages, not by way of penalty, for every day of delay until performance and acceptance
 - Procuring Entity need not prove it incurred actual damages
 - The amount is 1 1/10 of 1% of the cost of the unperformed portion for every day of delay
 - If sum of liquidated damages reach 10% of the contract amount, contract shall automatically be rescinded by Procuring Entity

Contract Implementation for Consulting Services

- Termination for Default
 - By written Notice of Default Contract may be terminated in whole or in part, as follows:
 1. Outside of Force Majeure or after receipt of cessation of Force Majeure, the Consultant fails to deliver or perform a material portion of the outputs and deliverables within the period specified (in latter case, period is 60 c.d.)
 2. The Consultant fails to perform any other obligation under the contract

Contract Implementation for Consulting Services

- Termination for Insolvency
 - Terminate through written Notice if Consultant becomes bankrupt or otherwise insolvent (as declared with finality by a court of competent jurisdiction)
 - In this event, termination will be without compensation to the Consultant, provided such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Consultant

Contract Implementation for Consulting Services

- Termination for Convenience
 - Through Notice in writing, Contract may be terminated in whole or in part, at any time for convenience by Head of Procuring Entity if:
 - He has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event/s, changes in law and government policies
 - Other grounds:
 - If physical and economic conditions have significantly changes rendering project no longer eco., fin. or tech. feasible
 - Funding for project as been withheld or reduced by higher authorities through no fault of Procuring Entity
 - Analogous circumstances

Contract Implementation for Consulting Services

- Termination for Unlawful Acts
 - Procuring Entity may terminate Contract in case of *prima facie* evidence that Consultant has engaged, before or during Contract implementation in unlawful acts relative to contract acquisition and implementation, such as:
 - Corrupt, Fraudulent, Collusive and Coercive Practices
 - Drawing up or using forged documents
 - Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade
 - Analogous circumstances