

Approved IRR for EO 262

OFFICE OF THE PRESIDENT OF THE PHILIPPINES

MALACAÑANG, MANILA

October 10, 2000

Hon. BENJAMIN E. DIOKNO
Secretary for Budget and Management
Chairman of the Procurement Policy Board
Department of Budget and Management
Building 1, Solano Street
San Miguel, Manila

Dear Secretary Diokno,

The Office of the President has received the set of Implementing Rules and Regulations of Executive Order 262 which the Procurement Policy Board drafted based on the principles of transparency, accountability, equity, effectiveness, efficiency, and economy in government procurement of goods/supplies/materials.

This is to approve the said Implementing Rules and Regulations of Executive Order 262, amending EO 302, series of 1996, entitled “Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government” and Section Three (3) of EO 201, Series of 2000, entitled “Providing Additional Policies and Guidelines in the Procurement of Goods and Supplies by the National Government”.

Very truly yours,

By authority of the President:

(SGD.) RONALDO B. ZAMORA
Executive Secretary

Approved IRR for EO 262

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
MALACAÑANG, MANILA

**RULES AND REGULATIONS TO IMPLEMENT THE AMENDMENTS TO
EXECUTIVE ORDER NO. 302 SERIES OF 1996 AND TO EXECUTIVE
ORDER NO. 201 SERIES OF 2000, PURSUANT TO EXECUTIVE ORDER
NO. 262 SERIES OF 2000 TO GOVERN PROCUREMENT OF GOODS AND
SUPPLIES BY THE NATIONAL GOVERNMENT**

SECTION 1.0 INTRODUCTION

1.1 General Policies and Objectives

1.1.1 In line with the government's efforts to uphold transparency and accountability, and achieve equity, effectiveness, efficiency and economy in its operations, the herein Implementing Rules and Regulations (IRR) are prescribed to standardize and provide uniformity to the existing rules and regulations governing the procurement of goods using government funds.

1.1.2 In the context of free enterprise, the aims and purposes of the government's procurement process are as follows:

- a. to purchase goods of acceptable quality at fair and reasonable prices from qualified and capable suppliers/manufacturers/distributors, with on time delivery and satisfactory compliance of all contract terms and conditions;
- b. to assure fair and equitable treatment of suppliers/manufacturers/distributors including arrangements for prompt payments;
- c. to adopt procurement procedures that utilize information technology; and
- d. to maintain records and collect data for refinement of procurement policies and procedures based on experiences gained.

1.2 Coverage and Applicability

1.2.1 These IRR shall govern and apply to all supply contracts of any agency or subdivision of National Government, including Government-Owned or Controlled Corporations (GOCCs), involving agreements for the acquisition/ procurement of goods/supplies/materials for either project-related or normal/regular operations and maintenance activities/requirements as well as mixed civil works-procurement agreements where the nature of the project requirements is essentially that

Approved IRR for EO 262

of procurement of goods/supplies/materials rather than civil works. Procurement of services such as janitorial or security services or repair and maintenance service is covered under these IRR, as well as procurement of materials and supplies provided by the agency concerned for such services. "Supplies", as herein used, include everything, except real estate, which may be needed in the transaction of public businesses, or in the pursuit of any undertaking, project, or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any sort, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services.

SECTION 2.0 **ORGANIZATION**

2.1 *Bids and Awards Committee*

Each government agency shall create a Bids and Awards Committee (BAC) in its head office and/or in its implementing office which shall be responsible for the determination of eligibility, conduct of bidding, evaluation of bids, post-qualification of the lowest calculated bid and recommending award of contracts. The record keeping, planning and management of the procurement process shall be designated to the procurement unit or the administrative unit, as appropriate, of the office/agency/corporation concerned. The prescribed composition of the BAC as well as relevant provisions pertaining thereto and its responsibilities are described in Annex "A".

SECTION 3.0 **GENERAL PROCEDURES**

3.1 *Certificate of Availability of Funds*

3.1.1 Contracts for the procurement of goods shall not be approved unless a Certificate of Availability of Funds (CAF) has been issued by the proper accounting official of the concerned agency certifying that funds are available and have been duly appropriated for the purpose to cover the expenditures for the current fiscal year.

3.2 *Procurement Planning*

3.2.1 Procurement of goods shall be undertaken according to a procurement plan that the agency concerned shall formulate to ensure that the goods/supplies/materials to be procured are available when needed. The basic content of the procurement plan including pertinent guidelines and policies thereon are prescribed in Annex "B".

Approved IRR for EO 262

3.3 *Method of Procurement*

3.3.1 As a general rule, awards of contracts shall be done after open competitive bidding unless a more appropriate method has been duly approved for adoption. Other than the open competitive bidding methods, Annex "C" outlines the various alternative methods of procurement and the conditions under which such methods may be adopted in the interest of economy and efficiency.

3.4 *Who May Be Eligible to Bid*

3.4.1 For Procurement Financed by the Government the following manufacturers/suppliers/distributors, whether 100% local - or at most 40% foreign-owned, may participate in the bidding for the supply of goods to be bid out by the Government:

- a. Duly licensed Individuals/Sole proprietorship;
- b. Partnerships or corporations;
- c. Manufacturers/suppliers/distributors forming themselves into a joint venture, i.e., a group of two or more manufacturers/suppliers/distributors that intend to be jointly and severally liable for a particular contract;
- d. Cooperatives duly registered with the Cooperatives Development Authority (CDA).

3.4.2 For projects financed wholly or partly with funds from International Financing Institutions (IFIs) as well as bilateral and other sources, eligible bidders shall meet the following requirements:

- a. the manufacturers/suppliers/distributor is an entity from an IFI/member country and eligible in accordance with the procurement rules of the IFI concerned as may be required; and
- b. the goods must be manufactured in or supplied, as well as bid by, an eligible member country bidder as may required under the procurement rules of the IFI concerned.

3.4.3 Only eligible bidders as hereinafter determined may participate in the bidding and may be awarded contracts if the same bidders are found qualified in accordance with the pertinent provisions of these IRR. An exceptional case is the acquisition called for under the Armed Forces of the Philippines (AFP) Modernization Program wherein only offers from

suppliers who are manufacturers themselves shall be entertained pursuant to the pertinent provisions of RA 7898.

Approved IRR for EO 262

SECTION 4.0 BIDDING PROCESS

4.1 Preparation of Bid/Tender Documents

4.1.1 To ensure fairest competition, the Bid/Tender Documents shall describe clearly and precisely the nature of the goods for which bids are to be invited, the technical standards/requirements which must be met, the place and period of delivery or installation, the warranty and maintenance requirements, the method and criteria to be employed in the evaluation and comparison of bids, and other pertinent terms. Annex "D" discusses and elaborates on the basic content of the Bid/Tender Documents.

4.2 Invitation to Apply for Eligibility and to Bid

4.2.1 Invitation to Apply for Eligibility and to Bid for local competitive bidding, the minimum content of which is prescribed in Annex "E", shall be publicly advertised at least 14 days before the deadline for submission of eligibility and bid requirements, in two consecutive issues of two newspapers of general circulation existing for at least 2 years, and posted in the website of the Department of Budget and Management (DBM) Procurement Service and of the concerned office/agency/corporation during the same period or for a longer period as determined by the Head of the office/agency/corporation concerned, and posted at any conspicuous place reserved for this purpose in the premises of the DBM Procurement Service and of the concerned office/agency/corporation, as certified by the Chief of Administrative Services or the equivalent official of the concerned office/agency/corporation.

However, for contracts to be bid costing two million pesos (P2,000,000) and below, advertisement may be posted only in the website of the DBM Procurement Service and of the concerned office/agency/corporation during the same period as above or for a longer period as determined by the head of the office/agency/corporation concerned, and posted at any conspicuous place reserved for this purpose in the premises of the DBM Procurement Service and of the concerned office/agency/corporation, as certified by the Chief of Administrative Services or the equivalent official of the concerned office/agency/corporation.

4.2.2 For international competitive bidding, advertisement shall be done along the same lines prescribed above. Advertisements of invitations for contracts financed partly or wholly from ODA funds provided by IFIs shall be in accordance with the procedures established by and agreed upon with the

concerned IFI.

Approved IRR for EO 262

4.2.3 For procurement methods other than the open competitive procedure, public advertisement of the Invitation to Apply for Eligibility and to Bid may be dispensed with.

4.3 *Issuance of Application for Eligibility Forms and Bid/Tender Documents*

4.3.1 Prospective bidders shall be given ample time to examine the forms for application for eligibility and the bid/tender documents and to prepare their respective bids. To provide ample time, the concerned BAC shall make available upon payment, if applicable, said documents from the time the Invitation to Apply for Eligibility and to Bid is first advertised.

4.3.2 Supplemental bulletins may be issued upon the government's initiative or upon request of any interested party who secured the bid/tender documents, otherwise referred to as a prospective bidder, for purposes of clarifying any provision of the bidding document. Any amendment to the bid/tender documents should be identified as an amendment. Such bulletins containing amendments and/or clarifications of certain provisions of bid documents shall be sent by mail, by hand or electronically, to and duly received/acknowledged by all interested parties within a reasonable time, including extension of the deadline set for the receipt of bids if needed, to be determined by the agency concerned depending on the nature, complexity and magnitude of such notices/amendments to allow said bidders to consider the same in preparing their respective bids.

Requests for clarification(s) on bid documents by interested parties who have secured the bid documents must be in writing, and submitted to the BAC within 14 calendar days before the deadline set for the submission of eligibility and bid envelopes. All clarifications shall be made in writing and furnished to all interested parties within the time stipulated in the Instruction to Bidders, before the deadline for the submission of bids.

4.4 *Determination of Eligibility of Prospective Bidders*

4.4.1 The capabilities and resources of prospective bidders shall be initially assessed, subject to post-qualification, to determine if they meet the requirements for eligibility. The determination of eligibility of prospective bidders shall be based on the submission of the following documents as specified hereunder:

A. Legal Documents

1. Current licenses/permits including Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate, mayor's permit/municipal license, Bureau of Internal Revenue value-added tax registration, and if applicable, DTI

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

accreditation certificate

2. Prospective bidder's statement that his firm is not "blacklisted" or barred from bidding by any government office/agency/corporation
- B. Technical Documents - prospective bidder's statement of previous similar contracts/sales completed in at least the last two years, as prescribed by the agency in the Invitation to Apply for Eligibility and to Bid. "Similar" contracts shall be defined by the concerned office/agency/corporation in the Invitation to Apply for Eligibility and to Bid. The bidder's documents shall include, for each contract, kinds of goods/supplies/materials sold, amount of contract, end user's acceptance, name of contract, date of contract, date of delivery, specification whether prospective bidder is a manufacturer, supplier or distributor.

In the case of capital goods, the value of the bidder's largest single contract, adjusted to current prices, completed within the period specified in the Invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.

- C. Financial Documents - audited financial statements, stamped "received" by the Bureau of Internal Revenue, for the last two calendar years.

Each of the above requirements shall be under oath and duly notarized, and shall form part of the duly accomplished application form for eligibility.

For special cases of procurement of goods/supplies/materials where foreign suppliers may participate, the above requirements may be substituted by the appropriate equivalent documents issued by the foreign supplier's country. These documents must be duly acknowledged by the Philippine Consulate therein.

- 4.4.2 The eligibility of prospective bidders shall be determined using simple "pass/fail" criteria and shall be determined as either "eligible" or "ineligible". If the prospective bidder is rated "passed" for all the above requirements, he shall be considered eligible. If the prospective bidder is rated "failed" in any of the above requirements, he shall be considered ineligible.

- 4.4.3 If only one bidder is found to be eligible, or that only one bidder responded to the Invitation to Apply for Eligibility and to Bid, the agency concerned shall

recognize a lone eligible bidder as valid.

4.4.4 Notwithstanding the eligibility of a bidder, the government reserves the right to review the qualifications of a bidder before the bidding of the contract is made. Should such review uncover any misrepresentation made

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

in the eligibility statements, or any changes in the situation of the bidder to materially downgrade the substance of such statements, the agency concerned shall disqualify the bidder from submitting a bid.

4.5 *Pre-bid Conferences*

4.5.1 For contracts to be bid costing more than one million pesos (P1,000,000), pre-bid conferences shall be conducted by the government, to clarify and/or explain any of the requirements, terms, conditions and specifications stipulated in the bid documents. For contracts to be bid costing one million pesos (P1,000,000) or less, pre-bid conferences may be conducted at the discretion of the concerned office/agency/corporation. The conference shall be held not later than 14 days after the bid documents have been made available to the prospective bidders to familiarize themselves with the documents but sufficiently in advance of bid opening to allow consideration of the conference results in preparing bids.

The bidders shall bear all costs in the preparation of their bids and the government shall in no case be responsible or liable for these costs, regardless of the outcome of the bidding process.

4.5.2 Among others, the pre-bid conference shall discuss the following:

- a. technical specifications
- b. legal requirements
- c. financial requirements
- d. production capability requirements
- e. delivery schedule
- f. after-sales service requirements

4.5.3 Any statement at the pre-bid conference shall not modify the terms of the bid documents unless such statement is specifically identified in writing as an amendment thereto and sent by mail, by hand or electronically to all parties who have secured the bid/tender documents. The minutes of the conference(s) shall be recorded and made available to all participants.

4.6 *Submission, Receipt and Opening of Eligibility and Bid Envelopes*

4.6.1 Prospective bidders shall submit their application for eligibility and bid documents simultaneously on the specified deadline for the submission of

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

the eligibility and bid envelopes. The eligibility envelope shall be sealed and contain the documents required in section 4.4.1. The bid envelope(s) shall be sealed and contain the documents required in section 4.8.1 and Annex "F".

In case of single-stage bidding: Prospective bidders shall submit simultaneously two envelopes, one containing eligibility requirements and the other containing bidding documents.

In case of single-stage bidding variation: Prospective bidders shall submit simultaneously three envelopes, one containing eligibility requirements and two containing bidding documents. Contents of each of the bid envelopes are specified in Annex "F".

In case of two-stage bidding: Prospective bidders shall submit their eligibility envelopes first, during the first stage of the bidding. Eligible bidders who are interested to bid shall submit their bidding documents in two sealed envelopes during the second stage of the bidding.

The eligibility envelopes of prospective bidders shall be opened first to determine eligibility of prospective bidders. In case any of the requirements specified in section 4.4.1 is missing from the eligibility envelope, the BAC shall declare said prospective bidder as "ineligible" to bid. Bid envelope(s) shall immediately be returned unopened to ineligible bidders in case of simultaneous submission of eligibility and bid envelopes.

In case of single-stage bidding variation and two-stage bidding, the first bid envelopes of eligible bidders shall be opened to determine the bidders' compliance with requirements. In case any of the requirements is missing, the BAC shall rate the bid as "failed" and immediately return to the bidder concerned his second bid envelope unopened. The second envelopes of the remaining eligible bidders shall be opened immediately for those whose first bid envelopes were rated "passed". In case any of the requirements in the second envelope is missing or if the submitted price exceeds the approved budget for the contract, the BAC shall rate the bid concerned as "failed".

Only bids whose envelopes are all rated as "passed" shall be evaluated and calculated to come up with the lowest calculated bid.

4.6.2 Bidders may be required to submit bids either through the single-stage bidding procedure, its variation or two-stage bidding procedures depending on the requirements of the procurement process as duly approved for use. These bidding procedures and the conditions under which the same maadopted are indicated in Annex "F".

Approved IRR for EO 262

4.6.3 Each bid shall be accompanied by a bid security that is payable to the concerned agency as a guarantee that the successful bidder shall, within fifteen (15) calendar days after receipt of the Notice of Award, enter into contract with the Government and furnish the required performance security for the faithful performance of all works called for. Failure to enclose the required bid security as to form and amount prescribed herein shall automatically disqualify the bid concerned.

4.6.4 The amount of the bid security shall be fixed at an amount equal to two-and-one-half percent (2-1/2%) of the approved budget for the contract to be bid. The security may be in the form of cash, cashier's check, manager's check, bank draft or guarantee against any reputable bank, letter of credit issued by a commercial bank, a surety bond callable on demand issued by a surety or insurance company accredited by the Office of the Insurance Commissioner, or any combination thereof.

4.6.5 Bids and bid securities shall be valid for such reasonable period determined by the head of the agency concerned. This period shall be so indicated in the Instructions to Bidders. In no case shall this period exceed one hundred twenty (120) days from the date of opening of bids.

4.6.6 Withdrawal of bids after the applicable deadline shall be subject to appropriate sanctions as prescribed herein. Bid modifications received after the applicable deadline as well as bids submitted after the deadline for the submission of bids shall not be considered and shall be returned unopened. Subject to this restriction, a prospective bidder may withdraw his bid, including the bid security, or modify it. Where a bidder wishes to modify his bid, he shall not be allowed to retrieve his original bid, but shall only be allowed to send another bid equally sealed, properly identified and linked to his original bid and marked as "modification".

4.6.7 No bid securities submitted in the form of sureties of all complying bidders shall be returned after the opening of bids. Bid securities submitted in form other than sureties, such as cash, cashier's check, manager's check, letter of credit and bank draft/guarantee, may be returned upon request of the bidder, provided that he is not among the three lowest evaluated complying bidders and such withdrawal shall be construed as a waiver by the bidder

for the award of contract. Bid securities in the form of sureties shall be returned only after the successful bidder has signed the contract and furnished the performance security but not later than the expiration of the bid security validity period indicated in the Instructions to Bidders.

Approved IRR for EO 262

4.6.8 If only one (1) bid is received in response to an invitation for bids, an award may be made to the single bidder provided that his bid price is not higher than the approved budget for the contract to be bid, his bid passes postqualification, and there is no evidence of collusion with non-participating suppliers and/or other parties and that other prospective bidders were given equal opportunity to respond.

4.7 *Determination of the Lowest Calculated Responsive Bid*

4.7.1 The "lowest calculated responsive bid" is defined as the bid (a) with the lowest calculated price as determined in section 4.8.3, and (b) which complies with or is responsive to all the requirements hereof. The bid satisfying (a) shall be referred to as the lowest calculated bid.

4.7.2 The BAC shall determine the lowest calculated responsive bid in the following manner:

- A. The first step is to determine whether each eligible bid complies with the submission requirements as specified hereunder in section 4.8.1 and in Annex "F". The BAC shall rate a bid "passed" only if it complies with all the requirements and the submitted price does not exceed the approved budget for the contract.
- B. The second step is to establish the calculated prices of all bids rated "passed" in the first step. Calculated prices are to be determined in accordance with section 4.8.3 hereunder. The BAC shall then rank the calculated prices from lowest to highest.
- C. The third step is the postqualification of the bidder with the lowest calculated price based on the results of the above evaluation. This shall be done in accordance with the provisions hereof. In case the said bidder fails to postqualify, the provisions of section 4.10 shall apply.

4.8 *Examination and Evaluation of Bids*

4.8.1 Prior to bid evaluation and comparison, bids received shall be examined using "pass/fail" criteria, to determine submission of the following: the bid

prices in the bill of quantities, the recurring and the maintenance costs (if applicable), bid securities as to form, amount, and validity period, authority of signatory, production/delivery schedule, personpower requirements, after-sales service/parts, technical specifications, credit line commitments or cash deposit certificate, and other nondiscretionary criteria as stated in the Instructions to Bidders.

Approved IRR for EO 262

The above requirements shall be submitted in the following manner: one sealed bid envelope for single stage bidding; two sealed bid envelopes for single stage bidding variation; and at least two sealed envelopes for two stage bidding.

Only bids that are determined to contain all the bid requirements in the sealed envelope/s shall be rated "passed" and shall be considered for evaluation and comparison.

4.8.2 The purpose of bid evaluation is to determine the lowest calculated bid. This bid, which may not be the lowest submitted price, shall be subject to postqualification. Postqualification shall determine the responsiveness of the lowest calculated bid to eligibility and bid requirements. The contract shall be awarded to the bidder with the lowest calculated responsive bid. The general guidelines to be followed in bid evaluation and comparison are outlined in annex "G".

The bid evaluation shall be based on a detailed analysis of the following:

- A. Completeness of the bid: unless the instructions to bidders specifically allow partial bids, bids not offering all of the required items shall be considered non-responsive and, thus, automatically disqualified
- B. The bid security must conform to the requirements of the Instructions to Bidders, as to type, amount, form and wording, and validity period
- C. The recurring costs if any and maintenance costs
- D. The bid price subject to a price equalization analysis calculating arithmetical errors and other minor deviations
- E. Identification of minor/major deviations and terms and conditions as described in the Instructions to Bidders

Bids that contain major deviations from the requirements in the instruction to bidders shall be considered invalid. Major deviations are those that would not

fulfill the purpose for which the bid was requested, or would prevent a fair comparison with bids that comply with the bid documents. Examples are:

- (1) stipulating price adjustment when fixed price bids were called for;
- (2) failing to respond to the specifications by offering a different design or work item;
- (3) subcontracting beyond allowable limits;

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- (4) refusing to bear contractual responsibilities specified in the bid documents, such as performance guarantees;
- (5) taking exception to critical provisions or setting conditions to his bid, such as applicable laws, taxes and duties, and dispute resolution procedures.

F. Corrections for errors, discounts, and other modifications: corrections for arithmetical or computational errors, as well as for discrepancies between total bid prices and extended unit bid prices, between stated total prices and actual summations, between prices in figures and in words, and other errors/discrepancies, shall use the methodology described in the Instructions to Bidders. Discounts and other modifications in the bid amounts shall be reflected in the evaluation of bids.

4.8.3 The concerned agency may employ any of the specific evaluation procedures described in Annex "H" in determining the bid's calculated price that it deems most appropriate for the requirements of a particular contract. The use of any such procedure shall be approved by the head of the concerned office/agency/corporation and indicated in the Instructions to Bidders.

4.8.4 Evaluation of bids shall be completed not later than thirty (30) calendar days from the date of the opening of bids. The BACs of all agencies shall prepare and keep on file detailed reports on the evaluation and comparison of bids setting forth the specific reasons on which recommendations are based for the contract award.

4.8.5 The Government reserves the right to reject any or all bids or to declare the bidding a failure if there is evidence of collusion among bidders thus resulting in the absence of competition. However, all bids shall not be rejected and new bids invited on the same specifications for the purpose of obtaining low prices, except in cases where the lowest submitted bid exceeds the approved budget for the contract under bidding. In such a case, a revised less expensive requirement may be substituted to seek a more affordable result.

4.8.6 No information relating to the detailed evaluation of bids, postqualification of the lowest calculated bid and recommendations concerning awards shall be disclosed to persons outside the BAC concerned before the announcement of the contract award to the successful bidder. After the award of contract, all unsuccessful bidders shall be informed individually in writing.

Approved IRR for EO 262

4.9 *Failure of Bidding*

4.9.1 The Government shall declare the bidding a failure and the concerned office/agency/corporation shall conduct a rebidding with re-advertisement as per section 4.2.1 of the project when no bids are received, or without re-advertisement when all bids fail to comply with all the eligibility and bid requirements or fail postqualification. In case of the latter, a direct notification shall be extended to all bidders either by mail, by hand, or electronically.

4.9.2 Should there occur another bidding failure after the conduct of the project's rebidding, the agency concerned may enter into a negotiated procurement.

4.10 *Postqualification of the Lowest Calculated Bid*

4.10.1 To determine the lowest calculated responsive bid, the BAC shall, within thirty (30) days from the determination of the lowest calculated bid, conduct a postqualification of the bidder with the lowest calculated bid. The postqualification shall verify, validate and ascertain whether the bidder with the lowest calculated bid complies with and is responsive to all the requirements for eligibility and of the bidding, using the non-discretionary "pass/fail" criteria stated in the Invitation to Apply for Eligibility and to Bid and in the Instructions to Bidders.

These criteria shall consider, but shall not be limited to, the following measures:

A. *Legality of documents*

To validate the licenses and agreements submitted by the bidder.

B. *Evaluation of technical capacity*

To determine compliance of the goods/product with the required specifications. This may include inspection and tests of the goods/product, maintenance and after-sales capabilities in applicable cases.

C. *Evaluation of financial capability*

To analyze and verify, whenever applicable, the required bank commitment to provide a credit line to the bidder in the amount specified and over the period stipulated in the Instructions to Bidders, to ensure that the bidder can sustain the operating cash flow of the transaction.

Approved IRR for EO 262

If the bidder passes in all criteria, he shall be considered postqualified and the concerned office/agency/corporation shall award the contract to him.

If, on the other hand, the bidder fails in any of the criteria, he shall be considered postdisqualified and the concerned agency shall undertake the same postqualification process on the bidder with the second lowest calculated bid.

SECTION 5.0 CONTRACT AWARD AND IMPLEMENTATION

5.1 Award of Contract

- 5.1.1 Award of contract shall be made using the submitted, not the calculated, price for the contract under bidding.
- 5.1.2 The decision whether or not to award the contract shall be made within thirty (30) calendar days after the completion of bid evaluation. If the decision is to award the contract, the Notice of Award should be approved by the Head of Agency or his duly authorized representative and issued within seven (7) calendar days from the date the decision to award is made.
- 5.1.3 For foreign-assisted projects, the duly approved decision to award shall be transmitted to the concerned IFI, for concurrence as may be required, within seven (7) calendar days from the date of approval of the decision. Likewise, the Notice to Award shall be issued by the concerned agency within seven (7) calendar days from the date of concurrence of the concerned IFI.
- 5.1.4 If the BAC finds that the bidder with the lowest calculated price passes the abovementioned postqualification criteria, his bid shall be considered as the "lowest calculated responsive bid", and the office/agency/corporation shall award the contract to him, at his submitted bid price, subject to the other provisions of this section.

If, however, the BAC finds that the bidder with the lowest calculated bid fails the abovementioned postqualification criteria, the office/agency/corporation shall immediately notify him in writing of his postdisqualification and the grounds for it. The postdisqualified bidder shall have seven (7) days from receipt of the said notification to request from the BAC, if he so wishes, a reconsideration of this decision. The BAC shall evaluate the request for reconsideration, if any, using the same non-discretionary "pass/fail" postqualification criteria.

Approved IRR for EO 262

After the office/agency/corporation has notified the first bidder of his postdisqualification, the BAC shall initiate and, within seven (7) days, complete the same post-qualification process on the bidder with the second lowest calculated price. If the request for reconsideration of the bidder with the lowest calculated price is denied and if the second bidder with the next lowest calculated price passes the postqualification criteria, the bid of the second bidder shall be considered as the lowest calculated responsive bid. The office/agency/corporation shall accordingly award the contract to the second bidder at his submitted bid, pursuant to the pertinent provisions of this section.

If the second bidder, however, fails the postqualification criteria, the procedure shall be repeated for the bidder(s) with the next lowest calculated bid(s), until the lowest calculated responsive bid is obtained for award.

5.1.5 Contract award shall be made within the bid validity period. Should it become necessary to extend the validity of bids, the agency concerned shall request in writing all those who submitted bids for such extension before the bid expiration date. Bidders, however, shall have the right to refuse to grant such an extension without forfeiting their bid security.

5.1.6 The successful bidder shall execute the contract with the concerned agency within fifteen (15) calendar days after receipt of the notice of award. All unsuccessful bidders shall also be notified of the award through official notices/communications. Notice of award shall immediately be posted in a conspicuous place within the premises of the concerned office/agency/corporation and in the website of the office/agency/corporation and/or the procurement service. A copy thereof may be requested in writing.

5.2 *Performance Security*

5.2.1 To guarantee the faithful performance of the contract awardee, he shall post a performance security, whose form and amount are prescribed in Annex "I", in favor of the Government within the time specified by the concerned agency after contract signing. Subject to the conditions of the contract, the performance security may be released after the issuance of the "Certificate of Acceptance" of the goods provided that there are no claims filed against the awardee or the surety company.

5.2.2 The supplier/manufacturer/distributor shall post an additional performance security proportionate to cover any cumulative increase of more than ten percent (10%) over the original value of the contract, including validity extension of performance security to cover approved contract time

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

extensions if any, as a result of cost adjustments and/or Amendments to Order. Similarly, the agency concerned may allow a proportional reduction in the original amount of performance security in case of a reduction in contract value.

5.3 *Warranties*

5.3.1 To assure that manufacturing defects will be corrected by the contract awardee for a fixed time after delivery, a warranty shall be required of the successful bidder, the obligations for which shall be covered by either retention moneys in the amount equal to ten percent (10%) of every progress payment, or a special bank guarantee equivalent to ten percent (10%) of the total contract price. Such amounts shall only be released after the warranty period provided that the goods supplied are free from defects and all the conditions imposed under the contract are fully met.

5.3.2 For supply contracts which include installation and commissioning services in addition to the supply of goods/equipment, the period and the required obligation of the warranty shall cover the same.

5.4 *Refusal to Enter into Contract*

5.4.1 Should the lowest calculated responsive bidder refuse, fail or be unable to enter into contract with the Government and/or to post the required performance security within the time provided therefor, he shall be meted with the appropriate sanctions provided under Annex "M" of these IRR and the office/agency/corporation concerned may consider for award the second lowest calculated responsive bidder at his submitted bid provided it does not exceed the approved budget of the contract to be awarded. In case of another refusal or failure, appropriate sanctions shall likewise be imposed and the agency concerned may consider the next ranked bidder and so on until an award is made.

5.5 *Approval of Contracts*

5.5.1 Supply contracts should be approved or disapproved by the Head of Agency concerned or his duly authorized representative in accordance with existing laws, rules and regulations within fifteen (15) calendar days from the date the successful bidder has executed the contract with the concerned agency and submitted all documentary requirements to perfect the contract.

5.6 *Issuance of Notice to Proceed*

5.6.1 The concerned agency shall issue the Notice to Proceed (NTP) to the successful bidder not later than fifteen (15) calendar days from the date of

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

contract approval. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the supplier.

5.7 *Amendment of Order*

5.7.1 Subject to conditions set forth in Annex "J", amendments to order may be issued at any time by the concerned agency. If any such Order increases or decreases the cost of, or the time required for executing any part of, the work under the original contract, an equitable adjustment, in contract price and/or delivery schedule shall be mutually agreed upon between the parties concerned and the contract accordingly modified in writing.

5.8 *Suspension of Work*

5.8.1 The Government may suspend the work wholly or partly by written order for a certain period of time as it deems necessary due to *force majeure* or any fortuitous events as defined in the contract. The supplier shall take all reasonable steps to minimize the costs allocable to the work covered by such order during work stoppage.

5.8.2 Before the suspension order expires, the agency concerned shall either lift such order or terminate the work covered by the same. If the suspension order is lifted, or if the period of the order expires, the supplier shall have the right to resume work. Appropriate adjustments shall be made in the delivery schedule or contract price, or both, and the contract shall be modified accordingly.

5.9 *Contract Termination*

5.9.1 The Government may terminate the contract for reasons of default and/or convenience. Annex "K" discusses the conditions and/or situations where such authority could be exercised.

5.9.2 Notwithstanding contract termination and subject to any directives from the concerned agency, the supplier shall take timely, reasonable and necessary actions to protect and preserve property(s) in his possession upon which the Government has an interest.

5.10 *Liquidated Damages*

5.10.1 When the supplier fails to satisfactorily deliver goods under the contract within the specified delivery schedule, inclusive of duly granted time extensions, if any, the supplier shall be liable for damages for the delay and shall pay the Government for liquidated damages, not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery for every day of delay until such goods

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

are finally delivered and accepted by the Government.

5.10.2 The Government need not prove that it has incurred actual damages to be entitled to liquidated damages. Such amount shall be deducted from any money due or which may become due to the supplier, or collect the same from any securities or warrantees posted by the supplier whichever is convenient to the Government. In no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price, in which event the concerned agency shall automatically terminate the contract and impose appropriate sanctions over and above the liquidated damages to be paid.

5.11 *Administrative Sanctions*

5.11.1 For offenses/violations committed under the pertinent provisions of these IRR, appropriate administrative sanctions shall be imposed on erring suppliers as prescribed under Annex "M".

SECTION 6.0 **PROCUREMENT BY ELECTRONIC MEANS**

6.1. Within two (2) years from the issuance of these IRR, government offices/agencies/corporations shall have adopted electronic communications and digital information processing technology systems in the conduct of procurement procedures.

Electronic procurement systems of government offices/agencies/corporations shall ensure the integrity, security and confidentiality of documents submitted through such systems. Due to the peculiar requirements of electronic procurement, government offices/agencies/corporations with electronic procurement systems may adopt procedures and safeguards to address such peculiar requirements, provided such are in accordance with and guided by the principles of transparency, accountability, equity, effectiveness, efficiency and economy and

submitted for review by the procurement policy board; and provided further, that, the determination of eligibility, postqualification, and the lowest calculated responsive bid are undertaken in accordance with the provisions of these implementing rules and regulations.

- 6.2 In the interim, government offices/agencies/corporations with reliable means and facilities may implement electronic procurement gradually, starting with basic commodities that the agency uses. Pending the issuance by the Supreme Court of rules and regulations on electronic notaries, the BAC shall require hard copies of documents submitted by prospective bidders. Where electronic and hard copies are inconsistent, and such inconsistencies materially affect the substance of the

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

bid, the bidder shall be automatically disqualified. In addition, the office/agency/corporation concerned shall keep hard copies of all documents received and notices sent, to protect from possible loopholes in implementation of electronic procurement.

The implementing procedures for electronic procurement are found in Annex L.

SECTION 7.0 **EFFECTIVITY**

- 7.1 These Implementing Rules and Regulations (IRR) as well as their amendments shall take effect fifteen (15) days after the date of publication of the same in the *Official Gazette* or in a newspaper of general circulation. The IRR and their amendments shall have prospective application.

ANNEX "A"

Bids and Awards Committee

The Bids and Awards Committee (BAC) as referred to by these IRR on the procurement of goods shall be composed of the following:..

Chairman (regular)-At least the third ranking official of the Agency

Executive Officer and Secretary (regular) - Legal Officer of the office/agency/corporation. The Administrative Officer of the agency concerned may be the Executive Officer and Secretary of the BAC when the agency does not have a legal officer in its plantilla positions, or when the legal officer is unavailable.

Member (regular) - Technical member designated by the Head of Agency or his authorized representative

Member (provisional) - At least two, with knowledge and experience in the

goods/supplies/materials to be bid, duly designated by the Head of Agency or his duly authorized representative on a project to project basis.

Member from the private sector - To ensure the transparency of the process, one private sector qualified representative each from the following organizations:

1. Philippine Chamber of Commerce and Industry
2. End-user group or non-governmental organization to be designated by the Head of office/agency/corporation Concerned

Both representatives shall serve only as observers.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

The relevant guidelines/provisions pertaining to the creation and responsibilities of the BAC are as follows:

1. *COA Representation.* A representative from the Commission on Audit (COA) shall be invited as observer in accordance with existing COA procedures and regulations.
2. *Non-infrastructure Agencies* (i.e., all government agencies other than the Department of Public Works and Highways, the Department of Transportation and Communications, the Department of Energy, the National Power Corporation, the National Electrification Administration, the National Irrigation Administration, the Metropolitan Waterworks and Sewerage Administration, and other infra-structure agencies and corporations) that do not possess an in-house technical capability to constitute their own BACs may cause the designation of any of the Infrastructure Agencies to undertake the qualification, bid and award services, as well as the preparation of specification and designs. If this is not possible due to manpower constraints, non-infrastructure agencies may hire the services of qualified and experienced consultants offering procurement services for the purpose. Such consultants shall be hired in accordance with existing laws, rules and regulations, particularly Executive Order No. 164 and the NEDA Board-approved Guidelines on the procurement of Consulting Services for Government Projects (Implementing Rules and Regulations).
3. *Agency Discretion.* At the discretion of the Head of Agency concerned, the BAC herein created may be the same as existing bids and awards committees in the Agency concerned involved in other types of contracts, such as civil works and consulting services contracts, or a different committee altogether. The Head of Agency concerned may create more than one (1) BAC in the Agency to allow flexibility and avoid over-burdening of work.
4. *Quorum.* A quorum of the BAC shall be composed of the Chairman or his

designated alternate plus two (2) members of the BAC. The Chairman may call meetings at any time as required to expedite work presented to the Committee. Decisions shall be made by a simple majority vote of members who are present and voting except the Chairman, who shall cast his vote only in the case of a tie. The decisions of the BAC pertaining to the award of contract shall however be merely recommendatory and shall be subject to the final approval/authority of the Head of Agency concerned or his duly authorized representative .

5. *Procurement-related Responsibilities.* The responsibilities of the BAC shall be to administer the bidding and award function. Specifically, the BAC shall determine the eligibility of prospective bidders, conduct preliminary examination of bids, evaluate bids, post-qualify the lowest calculated bid and recommend award of contracts.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

Planning and management of the procurement process, as well as record keeping, shall be the responsibility of the procuring unit or the administrative unit, as appropriate. These responsibilities include the following:

- a. review/validate the procurement plans of their respective Agency prior to the initiation of the bidding process.
- b. maintain a record listing of all supply contracts made for a minimum of ten (10) years. The record shall contain:
 - i. each manufacturer/supplier/distributor's name;
 - ii. amount and type of each supply contract;
 - iii. a listing of the goods procured under each contract;
 - iv. a brief history of the contract placement events including problems and their final solution.

All procurement records shall be retained and disposed of in accordance with the existing records retention guidelines and schedules approved by the Government.

- c. prepare and keep on file detailed reports on the evaluation and comparison of bids setting forth the specific reasons on which the recommendations are based for the award of the contract.

ANNEX "B"

Procurement Planning

Agencies concerned shall formulate their respective procurement plans in accordance with the guidelines prescribed hereunder with due consideration of Section 424 of the Government Accounting and Auditing Manual. The basic content of the procurement plan shall include the decisions as to the type of contract to be employed, the extent/size of contract scopes, the procurement methods to be adopted, along with the expected time schedule for each procurement action. Procurement of goods/supplies/materials shall be undertaken according to a plan that shall take into account the lead time for the procurement process plus the manufacturing and shipping times expected so that goods are available at the time needed.

1. *Types of Contract* As the general rule, the procurement of goods/supplies/materials by the Government shall be based on a fixed-price contract and no price adjustment/escalation shall be allowed. However, in cases where, as determined by the Government implementing agency concerned, uncertainties involved in the performance of the contract are of such magnitude

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

that the cost is too difficult to estimate with reasonable certainty and use of a fixed-price contract may seriously affect a manufacturer/supplier/distributor's financial stability or result in payments by the Government of contingencies that never occurred, types of contracts other than those based on a fixed-price basis may be used. Alternatively, the Agency concerned may provide for a price adjustment/escalation provision in the contract. The procedures, including the formulas to be adopted in the computation of the price adjustment/escalation due under a contract shall be agreed upon between the parties and shall be stipulated under the related contract.

The adoption of contract types other than the fixed-price contract or the inclusion of a price adjustment/escalation clause in the contract provisions shall be subject to the prior approval of the Head of Agency concerned or his duly authorized representative.

2. *Size of Contracts*. The size and scope of individual contracts depends on the magnitude, nature and location of the project. For projects requiring a variety of equipment, separate contracts shall generally be required for each type/variety.

For a project requiring similar but separate items of goods/supplies/materials, bids may be invited under alternative contract options that would attract the interest of both small and large firms. Manufacturers/suppliers/distributors may then be allowed to bid for individual contract (slices) or for a group of similar contracts (package) at their option. Contract requirements shall, however, not be artificially divided into multiple contracts (splitting of contract package) to avoid using any source selection method or for the purpose of doing away with or circumventing control measures under these IRR.

Bids under the alternative contract options as described above shall be evaluated on the basis of the option provided by the concerned manufacturer/supplier, i.e., a bid submitted as a package only shall be eligible for award only as a package and shall not be eligible for award on an individual contract/per item basis. The adoption of this option including the basis of bid comparison for the same shall be clearly and explicitly spelled out in the bidding documents.

The above notwithstanding, procurement of goods/supplies/materials shall be carried out in such a way each bid package or contract would be of such size as to attract widespread competition and provide optimum efficiency and economy.

For routine operations and maintenance activities, the procurement of necessary supplies, materials and equipment spare parts by the Agency concerned which are to be acquired through shopping as defined in Annex "C" of these IRR shall at no time exceed normal three-month requirements.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

ANNEX "C"

Alternative Methods of Procurement

In the interest of economy and efficiency, the agency concerned may adopt the following alternative methods of procurement after the Head of Office/Agency/Corporation concerned or his duly authorized representative has approved the use of the same as indicated in the bidding documents.

1. *Limited Source Bidding* (a.k.a., selective bidding) is a procedure that involves direct invitation to bid by the concerned Agency from a set of pre-selected manufacturers/suppliers/distributors with known experience and proven capability on the requirements of the particular contract. The BAC of the concerned Office/Agency/Corporation shall directly send to the pre-selected bidders the invitation to bid, which shall already indicate the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of these IRR. Limited source bidding may be employed by concerned offices/agencies/corporations under any of the following conditions:
 - a. Procurement of highly specialized types of goods/supplies/materials where only a few manufacturers/suppliers/distributors are available who could maintain a competitive position, such that resorting to the open competitive bidding method will not likely result in any additional manufacturers/suppliers/distributors participating in the bidding;
 - b. Procurement of relatively small additions to an existing fleet of equipment where a few manufacturers/suppliers/distributors are well-established and who provide satisfactory after-sales services;

- c. Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole; and
- d. Procurement of goods involving relatively small amounts, i.e., amounts involving one million pesos (P1,000,000) or less, such that the cost and time of publicly advertising the bidding is not justifiable; provided, that, splitting of contracts shall not be resorted to simply to meet the maximum amount and avoid public bidding. "Splitting of contracts" happens when two (2) or more contracts for similar goods/supplies/materials are made in favor of one dealer or supplier within one (1) month of each other and analogous cases.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- 2. *Direct Contracting* or single source procurement. This procedure does not require elaborate bidding documents. The selected manufacturer/supplier/ distributor is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned offices/agencies/corporations under any of the following conditions:
 - a. Procurement of items of proprietary nature which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
 - b. Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government;
 - c. When the procurement of critical plant components from a specialist manufacturer/supplier/distributor serves as a precondition of a contractor responsible for the erection of the project for his guarantee of project performance;
 - d. For purposes of maintaining standards, such as a purchase involving a small addition to an already existing fleet of equipment; and
 - e. In emergencies where procurement must be immediately accomplished regardless of cost. Emergencies shall be defined as those situations where there is imminent danger to life and/or property as determined by the Head of Office/Agency/Corporation concerned. Emergency procurements shall not exceed a monthly amount of four percent (4%) of the annual agency expenditure program for supplies and materials out of the appropriations allotted for maintenance and other operating expenses of the agency concerned, except as

may be authorized by the president upon the joint recommendation of the Department of Budget and Management and the Commission on Audit.

3. *Repeat Order*. Under this method, acquisition is made on additional quantities from the manufacturer/supplier/distributor who provided the same items under a contract previously awarded through open competitive bidding. Repeat orders may be resorted to by Agencies only in cases where the manufacturer/supplier/distributor who was selected in the previous bidding is clearly superior to the other bids not only in terms of the price quoted but also in terms of equipment reliability, availability of spare parts, after-sales service and delivery period, among others. Repeat orders shall likewise be subject to the following conditions:

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- a. Contract Prices of the repeat order must be the same as or lower than those in the original contract, provided that such prices are still the most advantageous to the government after price verification;
 - b. The repeat order will not result in splitting of requisitions or purchase orders;
 - c. Repeat orders may be availed of only within a six (6) month period from the date of the original purchase; and
 - d. The repeat order shall not exceed the quantity in the original contract.
4. *Shopping* is a method of procurement whereby the purchaser simply requests for the submission of price quotations for the goods/supplies/materials to be procured directly from manufacturers/suppliers/distributors of known qualifications. This method of procurement shall be employed only in the following cases, and to ensure competitive prices, the BAC concerned shall obtain quotations from at least three (3) manufacturers/suppliers/distributors, provided, that, the prohibition against splitting of contracts in paragraph 1.d of this annex shall be equally applicable to this alternative method of procurement:
 - a. procurement of readily available off-the-shelf goods or standard specifications goods that are small in value, i.e., amounts involving one million pesos (P1,000,000) or less;
 - b. procurement of ordinary/regular office supplies and equipment involving an amount not to exceed one million pesos (P1,000,000). At the discretion of the Head of Office/Agency/Corporation concerned, the procurement of ordinary/regular office supplies and equipment involving an amount not

exceeding one million pesos (P1,000,000) may be handled by the respective Administrative Staff/Department/Division of the Office/Agency/Corporation instead of the BAC.

5. *Negotiated Procurement*. Negotiated procurement may be employed by Agencies only in the following cases as determined by the Head of Agency concerned:
- a. Where there has been failure of competitive bidding for the second time as provided under section 4.9 hereof;
 - b. Where the existing contract has been terminated in accordance with the pertinent provisions of these IRR and existing laws, rules and regulations;
 - c. Whenever the goods/supplies/materials are to be used in connection with a project or activity which cannot be delayed without causing detriment to public service; and
 - d. Whenever the purchase is to be made from another officer/agency/corporation of the Government. One special negotiated procurement scheme which government

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

offices/agencies/corporations may consider is the procurement through the Procurement Service of the Department of Budget and Management. Such mode of procurement should, however, conform to Executive Order No. 359 which prescribes the guidelines in the implementation of Executive Order No. 285 regarding the operation of a government-wide procurement system for common-use goods/supplies/materials.

ANNEX “D”

Bid/Tender Documents

The Bid/Tender Documents shall basically include the Instructions to Bidders; General and Special Conditions of Contract; Technical Specifications and Drawings; Form of Bid; Forms of Bid Security, Performance Security and Warranty; Type/Form of Contract; Price Form; and Bill of Quantities.

1. The Instructions to Bidders, which establishes the rules of the bidding, shall as much as possible be clear, comprehensive and fair to all prospective bidders and shall include at the minimum the following information:
 - a. *General Description* of the goods/supplies/materials to be provided, including site location and other pertinent project information.
 - b. *Scope of Bids*, whether bidders are required to bid for the entire contract or are permitted to bid for parts of it (alternative contract options).
 - c. *Bid Submission Procedures and Requirements*, which shall include information on the language to be adopted in the preparation of the bids, the manner of

submission, the number of copies of bid proposals to be submitted aside from the original, pertinent addresses such as where the bids are to be submitted, deadline for the submission of bids, permissible mode of transmission of bid proposals, the exact place, date and time of opening of bids, except in the case of the two (2) stage bidding where the exact place, date and time of bid opening shall be announced as prescribed by the BAC.

- d. *Terms of Delivery*, which shall refer to the basis/currencies and applicable exchange rates on which the bid prices are to be quoted and on what terms the contract is to be awarded.
- e. *Bid and Bid Security Validity Period*, which shall consider the time that will be required to examine and evaluate all bids, select the successful bidder, obtain the necessary approvals, including the time required to notify the successful bidder of the award of contract in his favor.
- f. *Method and Criteria for Bid Evaluation* that will be adopted.
- g. *Pre-bid Conference schedule* where applicable.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- 2. The Conditions of Contract shall contain the provisions that clearly define the basic and legal responsibilities of and relationships between the parties involved. Provisions for bonds, guarantee, warranty obligations of the manufacturer/supplier/distributor, form of warranty and warranty period, insurance, liquidated damages, taxes and duties, *force majeure* or fortuitous events, contract termination, and resolution of disputes including arbitration procedures in addition to the general conditions and supplementary conditions suited to the nature of the goods should be included.
- 3. The Technical Specifications shall describe all the essential features of the item(s) to be procured and should state that any non-conformity to these essential features shall be treated as a major deviation and would render the bids as non-responsive. Drawings should be consistent with the text of the technical specifications.

If particular standards to which goods/supplies/materials must comply are cited, the specifications shall state that goods meeting other authoritative standards, which ensure an equal or higher quality than the standards mentioned will also be accepted.

Specifications should be based on performance requirements, and, as a general rule, reference to brand names, catalogue numbers or the like shall be avoided unless this is deemed necessary to ensure inclusion of certain essential features. In such case, the reference should be followed by the words "or equivalent" and the

specifications should permit offers of alternative goods which provide performance and quality at least equal to those specified.

ANNEX “E”

Invitation to Apply for Eligibility and to Bid

The Invitation to Apply for Eligibility and to Bid advertised, in accordance with section 4.2.1, shall include the following information, among others:

- a. the general description and nature of the goods to be procured and the source of funding, and the approved budget for the contract to be bid;
- b. eligibility criteria as prescribed under sections 3.4 and 4.4 of these IRR;
- c. the deadline set for securing the related application for eligibility statement forms/documents and bid/tender documents, including the place/office where such documents could be obtained;
- d. the cost of the application for eligibility statement forms/documents and bid/tender documents, and the mode of payment, if any;

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- e. the deadline set for the submission of prospective bidders' application for eligibility statements and bid/tender documents, including the place/office where the same shall be submitted;
- f. the date/time/place of opening of eligibility and bid envelopes;
- g. the date/time/place of the pre-bid conference where applicable;
- h. the name, address, telephone, telex, e-mail and website addresses of the concerned office/agency/corporation;
- i. Disclaimers

ANNEX “F”

Allowable Bid Submission and Bidding Procedures

Agencies may require bidders to submit bids in accordance with any of the following procedures prescribed below. The use of either procedure shall have the prior approval of the Head of Agency concerned or his duly authorized representative and shall be so indicated in the Instructions to Bidders.

The BAC shall conduct post-qualification of the lowest calculated bid, using “pass/fail” criteria, as stated in section 4.10 and in the Instructions to Bidders.

1. Single Stage Bidding with post-qualification for limited-source bidding

Under the single stage bidding, bidders shall be required to submit both their technical and financial documents/forms/statements in one (1) envelope as stipulated in the Instructions to Bidders. This procedure may be adopted in the procurement of goods/supplies/materials with simple or standard technical requirements or where offers are likely to be technically comparable.

2. Single Stage Bidding Variation with post-qualification

A variation to the above procedure is to require bidders to submit their technical and financial proposals in two (2) separate sealed envelopes. The exact place, date and time when the first envelopes are to be opened shall be stipulated in the related Instructions to Bidders.

Bids in the prescribed bid form including its annexes shall be submitted in two (2) sealed envelopes with the name of the contract to be bid and the name of the bidders in capital letters, addressed to the BAC of the Office/Agency/Corporation concerned. They shall be marked “do not open before (date and time of opening of bids).”

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

The first envelope shall contain the following information/documents:

- a. bid securities as to form, amount, and validity period;
- b. authority of signatory;
- c. production/delivery schedule;
- d. personpower requirements;
- e. after -sales service/parts;
- f. technical specifications;
- g. if applicable, credit line commitments or cash deposit certificate; and
- h. other non-discretionary criteria as stated in the instructions to bidders.

The second envelope shall contain the following:

- a. the bid prices in the bill of quantities; and
- b. for capital equipment, detailed recurring and maintenance costs.

The first envelopes shall be opened in public to determine whether or not the bidder has submitted all the required documents in the first envelope. For this purpose, a checklist of the required documents shall be made and the submitted documents shall be checked against this checklist to ascertain if they are all present in the first envelope. In case one or more of the above-required documents is missing in the first envelope, the BAC shall disqualify the concerned bidder outright and immediately return to him his second envelope unopened. The BAC shall inform such bidders in writing of their disqualification, including the specific reasons for the same.

The second envelopes shall be opened in public immediately after the opening of the first envelopes but only for the bidders that complied with the requirements for the first envelope. In case one or more of the above-required documents is missing in the second envelope, the BAC shall disqualify the concerned bidder outright. The BAC shall inform such bidders in writing of their disqualification, including the specific reasons for the same. The disqualified bidders have seven (7) calendar days from receipt of such notice to file a written request for reconsideration with the BAC whose decision shall be final.

3. Two-Stage Bidding with post -qualification

For supply contracts wherein due to the nature of the requirements of the project the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

unequal bids is likely to occur, the two (2)-stage bidding procedure may be employed. In these cases, the Agency concerned shall prepare the bidding documents, including the technical specification in the form of performance criteria only.

Under this procedure, prospective bidders shall be requested at the first stage to submit their eligibility requirements and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders *vis-a-vis* the required performance standards.

A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the bidding documents for purposes of drawing up the final revised technical specifications/requirements of the contract.

Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes

containing the documents as specified earlier in this annex, at a specified deadline, after which time no bids shall be received. The concerned BAC shall then proceed in accordance with the applicable procedure prescribed in the Single Stage Bidding Variation.

ANNEX “G”

Guidelines on Bid Evaluation and Comparison

The evaluation and comparison of bids received shall be in accordance with the following general guidelines:

1. Only bids which have been rated “passed” in the preliminary examination of bids shall be considered for bid evaluation.
2. Bids quoted in various currencies shall be converted to Philippine Peso for purpose of bid price comparison using the exchange rate prevailing on the date to be specified in the bidding documents.
3. Additional credits shall not be given for bids that exceed the required technical standards or specifications.
4. Minor omissions, deviations, exceptions and reservations in the bids shall be quantified and added to the quoted bid price for purposes of comparison. Prices of minor items called for in the bidding documents but were omitted shall be based on the average of the other responsive bids corresponding to that particular item or on

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

available catalogue prices. However, to avoid underpricing of bids through omissions, the bidders shall not be allowed to make upward adjustments in their bid price.

5. The evaluation of various commercial features of a bid, as well as performance, efficiency, productivity and technical features shall strictly follow the procedure prescribed in the bidding documents.
6. The calculated price of each bid shall be compared to determine the bid most advantageous to the Government. Award of the contract shall be made to the lowest calculated responsive bid. Contract award to a bidder submitting a higher quality item than that designated in the bidding documents is not permissible if such bidder is not also the lowest evaluated calculated responsive bidder.
7. For projects financed partly or wholly by ODA funds, the rules and procedures of the concerned funding agency with respect to the application of the domestic preference scheme shall be adopted.
8. During bid analysis, the concerned BAC shall be allowed to request bidders for any clarification(s) and/or information(s) needed to evaluate the bids but shall not be permitted to request or permit any bidder to change the substance or price of his bid.

9. In the evaluation of the bids, the BAC concerned may be allowed to waive any minor deviations in a bid which are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders, that is, the effect on price, quantity, quality, delivery, or contractual conditions would be negligible.
10. If a mistake and the intended correct bid are clearly evident on the face of the bid submitted, the bid shall be corrected to the intended correct bid and shall be evaluated on the basis of the corrected bid. Examples of mistake that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. Such bids, after being corrected to the intended bid, shall not be allowed to be withdrawn. Withdrawal of the same shall be subject to appropriate sanctions.

ANNEX "H"

Specific Evaluation Procedures

For the determination of the lowest calculated bid, the BAC of the concerned agency may employ any of the following specific price equalization procedures that it deems appropriate for the requirement of a particular contract and shall be so indicated in the bidding documents. The use of any such procedure shall be subject to the prior approval of the Head of Office/Agency/Corporation concerned or his duly authorized representative.

NOVEMBER 27, 2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

1. **Lowest Price Analysis.** In procuring simple equipment, tools, supplies, and raw or semi-finished raw materials, as well as ordinary/regular office supplies and equipment, or where there is a strong possibility that offers will be for identical or comparable materials, evaluation of the bids on the basis of the price alone may be appropriate. In these cases, foreign bids shall be evaluated on the basis of the cost, insurance and freight (CIF) port of entry prices while domestic or local bids shall be evaluated on the basis of the ex-factory price. For local bidders offering wholly imported goods, the bids shall be evaluated on the basis of the off-the-shelf price which shall include custom duties paid on the imported goods by the firm.
2. **Price Plus Other Factors Analysis.** In the procurement of durable goods such as engines, pumps, vehicles, highway equipment and other similar equipment, it is more appropriate to evaluate each bid on the basis of the price quoted and other relevant factors that are intrinsic to the purpose for which the goods are intended. The probable costs of these factors shall, where possible and appropriate, be quantified in monetary terms to facilitate comparison. The major considerations and general outline to be considered under this procedure may include the following, among others:

- a. Extra features, option, accessories, etc. Where a bidder failed to provide a quotation for a particular item called for in the bidding document, but where such omission is not serious enough to warrant rejection of the bid, then the price of that omitted item based on available catalogue prices or the average of the responsive bids corresponding to that particular item shall be added to the bidder's total bid for purposes of comparison. Such addition shall however be made only on items specifically called for under the bidding documents. An addition shall not be made to a bid for the sole purpose of making it comparable to another bid who has offered an extra item not included in the specifications.
- b. Cost of inland transportation and insurance. When the comparison of bids is to be made on the basis of the delivered cost, expenses for inland transportation and other expenditures incidental to the handling, transportation and delivery of goods to the project site shall be considered in the evaluation.
- c. Delivery schedules. As much as possible, procurement shall be initiated early enough so that delivery schedules normally prevailing in the market are acceptable and no premium has to be given for early deliveries. However, in cases where the required goods are urgently needed, the Government may opt to provide a non-discretionary premium for early deliveries. In such cases, the premium shall be explicitly stated in the Instructions to Bidders and the evaluation methodology used to arrive at the monetary equivalent to be discounted from the submitted bid price shall likewise be disclosed. The monetary discount shall be based on the proportionate benefit to be earned by the Government as a result of such early delivery.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

- d. Cost of spare parts. In certain procurements, the cost of the initial and subsequent spare parts may be very important if they add up to a substantial part of the maintenance cost. In such cases, the cost of spare parts should be considered in the evaluation.
3. Life Cycle Cost Analysis. Evaluation of bids through this procedure involves the assessment of the initial cost of the acquisition plus the follow-on cost (costs for maintenance and operation) of ownership. This method is most suitable in the procurement of major industrial plants or equipment where the follow-on costs are quite substantial so much so that a difference in the initial quoted price between competing bidders can easily be outweighed by the difference in the follow-on costs. For purposes of bid comparison, follow-on costs shall be discounted to their present values at a discount rate to be prescribed in the bidding documents. Likewise, the bidding documents shall clearly outline the methodology for the quantification of the follow-on costs and also the precise information required to be submitted by the bidders.
 4. Other evaluation procedures using transparent, upfront and non-discretionary

within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:

- a. drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith;
- b. method of shipment or packing; or
- c. place of delivery.

An amendment to Order may also be issued by the concerned Agency where there are additional items needed and necessary for the protection of the goods which were not included in the original contract. Payments for these additional items shall be based on the unit prices in the original contract for items of goods similar to those in the original supply contract. If the supply contract does not contain any rate applicable to the additional item, then suitable prices shall mutually be agreed upon between the parties. Request for payment by the manufacturer/supplier/distributor for any additional items shall be accompanied by a statement with the approved supporting forms, giving a detailed accounting and record of amount for which he claims payment. The contract time shall likewise be extended if the acquisition of such additional items so warrants.

Under no circumstances shall a supplier proceed to commence work under any Amendment to Order unless the same has been approved by the Head of Agency concerned or his duly authorized representative. As an exception to the rule, the Regional Director/Head concerned may authorize the immediate start of work under

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

any Amendment to Order in the event of emergencies to avoid detriment to public service, or damage to life and/or property or when time is of the essence, provided however, that the same is valid only on items up to the point where the cumulative increase in the contract cost which has not yet been duly fully approved by the Head of Agency concerned or his duly authorized representative does not exceed five percent (5%) of the original contract cost, provided further that the corresponding Amendment to Order shall immediately be prepared and submitted for approval to the Head of Agency concerned or his duly authorized representative. For an Amendment to Order involving a cumulative amount exceeding five percent (5%) of the original contract price, no work thereon shall be commenced unless the same has been approved by the Head of Agency concerned or his duly authorized representative.

ANNEX "K"

Contract Termination

Termination for Default If the manufacturer/supplier/distributor refuses or fails to

perform any of the provisions of the contract with such diligence as will ensure its completion within the time specified in the contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of the contract; the Agency concerned shall notify the manufacturer/supplier/distributor in writing of the delay or non-performance and if not cured in time specified in writing by the Agency concerned, it may terminate the manufacturer/supplier/distributor's right to proceed with the contract or such part of the contract as to which there has been a delay or a failure to properly perform.

In the event that such termination applies to the remainder of the contract, the Government shall impose the appropriate sanctions provided in these IRR and may proceed to contract out the remaining works/items through negotiated procurement. In case the termination applies only to portions of the remaining works/items, the Government may likewise resort to negotiated procurement to acquire the terminated portions of the contract and the original manufacturer/supplier/distributor shall be held liable for the excess in the costs to be incurred by the Government for the portions terminated.

Termination for Convenience The concerned Agency may, when the interest of the Government so require, terminate the contract in whole or in part, for the convenience of the Government. The Agency concerned shall give written notice of the termination to manufacturer/supplier/distributor specifying the part(s) of the contract terminated and when termination becomes effective.

The manufacturer/supplier/distributor should incur no further obligations in connection with the terminated work and on the date set in the notice of termination it will stop work to the extent specified. The manufacturer/supplier/distributor should

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

also terminate outstanding orders and subcontract as they relate to the terminated work and shall settle the liabilities and claims arising out thereto. The manufacturer/supplier/distributor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

ANNEX “L”

Procurement by Electronic Means

The sequential submission of eligibility and bid requirements by prospective bidders may be allowed under procurement by electronic means, provided, that, it does not lead to negotiation when the procurement method being used for the project is open competitive bidding.

The determination of eligibility based on requirements stated in section 4.4.1 may be

done electronically.

Submission of bid envelope(s) may be done electronically through the bid submission system. To ensure the integrity and confidentiality of bids prior to their opening by the BAC, the following conditions must be met:

- a. the concerned office/agency/corporation shall utilize methods of ensuring that nobody, including members of the BAC, will be able to alter the contents of bids submitted electronically or read the same ahead of the stipulated time for the decryption or opening of such bids;
- b. that such electronic security methods are periodically tested and upgraded to ensure that they can not be breached; and
- c. that the electronic procurement system of the procurement service and/or the concerned office/agency/corporation shall be protected from hacking or cracking through electronic security features.

The submission of bids shall be through encrypted or electronically locked documents.

The electronic procurement system of the concerned office/agency/corporation shall incorporate features that bar incoming bids after the cut-off period specified in the instructions to bidders.

Once decrypted or opened, bids submitted electronically shall be made available for viewing by the public.

Procurement procedures other than the above may be done manually.

NOVEMBER 27,2000

OFFICIAL GAZETTE

VOL.96, NO.48

Approved IRR for EO 262

The electronic procurement system shall include an update of the procurement process for every contract under bidding, regardless of whether procurement is being done manually or electronically. The update shall show the whole procurement process, from advertisement to approval of contract, and dated accordingly.

ANNEX “M”

Administrative Sanctions

The following sanctions shall be imposed on manufacturers/suppliers/ distributors for offenses/violations committed under the pertinent provisions of these IRR:

- a. Suspension for one (1) year for the first offense, disqualification to bid for two (2) years for the second offense, and perpetual disqualification for the succeeding offenses for:

- i. misrepresentations of any information or concealment of any material fact in the bidder's qualification statements and/or bids; and
 - ii. other acts of the manufacturer/supplier/distributor which directly or indirectly tend to defeat the purpose of competitive bidding.
- b. Forfeiture of the bid security for the first offense, forfeiture of the bid security and suspension for one (1) year for the second offense, and forfeiture of bid security and perpetual disqualification for the succeeding offenses for:
 - i. refusal or failure of the proposed awardee/selected bidder to enter into contract with the Government or failure to post the required performance security within the prescribed time; and,
 - ii. withdrawal of bid after the applicable deadline as specified in Section 4.6.3.
- c. Forfeiture of performance security for the first offense, forfeiture of the performance security and suspension for one (1) year for the second offense, and forfeiture of performance security and suspension for two (2) years for succeeding offenses in case of contract termination due to manufacturer/supplier/distributor's default.