

GUIDELINES ON THE USE OF AN ORDERING AGREEMENT UNDER THE GOVERNMENT PROCUREMENT REFORM ACT

1. SCOPE AND APPLICATION

These guidelines shall govern the use of ordering agreements; limited to situations where the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units intend to procure non-inventory parts necessary to maintain the operational effectiveness of existing major equipment; the requirement thereof, although identified, becomes necessary only upon the happening of a fortuitous event. In which case, the quantity and the exact time of need for said parts cannot be accurately pre-determined.

Therefore, for reasons of economy, keeping in stock of said parts for possible future use or by procuring them for inventory shall be disadvantageous to the government. This excludes parts required for routine maintenance, the volume and delivery time being determinable at an earlier period.

2. PURPOSE

These guidelines are formulated to meet the following objective:

To prescribe the procurement rules and procedures to govern situations wherein the procurement by the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions and local government units necessitate entering into ordering agreements for parts of unknown quantity; and it is inadvisable for said procuring entity to carry it on stock or commit to purchase a certain quantity within a given period.

3. DEFINITION OF TERMS

- a. **Non-inventory items.** Refer to non-routinary or non-recurring requirements not ordinarily kept in stock by the procuring entity but which may become necessary upon the happening of a fortuitous event.
- b. **Unknown Quantity.** Refers to a situation where, in the procurement of certain items, it can not be determined in advance that a definite/certain quantity will be required within a given period.

- c. **Delivery Order Contract.** Refers to a contract that authorizes and obligates a supplier to deliver a certain quantity of items within an agreed period pursuant to the Ordering Agreement entered into between the procuring entity and said supplier. For purposes of these guidelines, the Delivery Order Contract shall signify exercise by the procuring entity of the option to purchase in the amount and quantity not exceeding those indicated in the Ordering Agreement List and shall constitute the actual purchase by the procuring entity.
- d. **Ordering Agreement.** Refers to a written instrument of understanding, negotiated between the procuring entity and the Lowest Calculated and Responsive Bidder and used to expedite the procurement process when anticipated needs for specific items are not known. It grants the procuring entity the option to either place an order or not buy at all, within a given period of time. The Ordering Agreement shall contain (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies to be delivered including lead time for the receipt thereof, and (3) methods for issuing and delivering future orders under the ordering agreement.
- e. **Order Agreement List.** List of parts and their corresponding quantities that by its nature have been identified to be of the type where procurement utilizing an Order Agreement is the most practical, economical, and advantageous for a procuring entity.

4. **PROCUREMENT PLANNING**

- 4.1. No procurement shall be undertaken under these guidelines unless the same is in accordance with the Annual Procurement Plan (APP) and the Project Procurement Management Plan (PPMP) prepared by the procuring entity. The procuring entity, in preparing its APP, shall include, for purposes of entering into an Ordering Agreements, an Order Agreement List which shall remain unchanged, neither to be increased or decreased after advertisement and during its life span of one (1) year.
- 4.2. The APP shall indicate the types of items considered for inclusion in the Order Agreement List.
- 4.3. The Order Agreement List shall indicate the following information:
 - i. The type and nature of the item to be procured;
 - ii. The technical specifications of the item;
 - iii. The estimated quantity in the event that the need for the product arises;
 - iv. The estimated unit contract price;
 - v. The total ABC including budgetary allotments per type of product; and

- vi. Other appropriate information as may be required.
- 4.4. The estimated agency unit contract price per item shall be determined after careful consideration of variables that may affect future market prices.
- 4.5. The estimated quantity of items to be procured should not exceed the expected number to be required by the agency should the need arise; in which case, such estimated quantity of items shall not be deemed as the minimum purchase. It shall be used only for the purpose of approximating a quantity of items which will be needed by the procuring entity and which the supplier is bound to deliver upon the happening of a fortuitous event.
- 4.6. The total ABC shall be the ceiling amount for any item or a combination of items to be purchased under the Delivery Order Contract/s.

5. COMPETITIVE BIDDING

- 5.1. The procuring entity shall package the contract for Ordering Agreements in the most practicable manner and conduct the bidding using the single stage, three-envelope procedure as prescribed in Sections 23 and 25 of R.A. 9184 and its IRR-A, whereby bidders are to bid on a per item basis as presented in the Ordering Agreement List. For this purpose, the procuring entity, through its BAC, shall prepare separate Technical Specifications and/or Terms of Reference for every line item to be bid out and indicate, among others; (1) an estimate of the budgetary allocation for each item, (2) the estimated quantity it may procure when needed, and (3) the requested delivery lead time from execution of Delivery Order Contract or from any date determined by the procuring entity.
- 5.2. The eligibility requirements shall include, among others, the capacity of the bidder to deliver the estimated quantity as prescribed in the Ordering Agreement List.
- 5.3. The Lowest Calculated and Responsive Bidders, determined in accordance with the provisions of the Implementing Rules and Regulations Part A of R.A. 9184, shall be declared and recommended to the Head of the procuring entity for the issuance of the Notice of Award.
- 5.4. Within a period of fifteen (15) calendar days, in case of NGAs, and thirty (30) calendar days, in case of GOCCs, from the determination/declaration of the winning bidders, the head of the procuring entity or his duly authorized representative shall approve or disapprove the recommendation for award. In case of approval, a Notice of Award shall be issued in favor of the winning bidder.

6. ORDERING AGREEMENT

- 6.1. Within ten (10) calendar days from receipt by the winning bidder of the Notice of Award, the winning bidder or its duly authorized representative shall formally enter into an Ordering Agreement with the procuring entity concerned for an option amount of one peso to be paid by the procuring entity as a consideration for the privilege granted to the procuring entity to buy the items only upon its determination that it is necessary.
- 6.2. The Ordering Agreement shall not state or imply any agreement by the procuring entity to place future contracts or release orders with the contractor. It shall (1) include a fixed contract price per item; (2) include delivery terms and conditions; (3) include terms of payment; (4) specify that the execution and issuance of Delivery Order Contracts shall reckon the perfection of the actual procurement contract; and (5) that upon the execution and issuance thereon, all laws, rules and guidelines governing implementation of procurement contracts under R.A. 9184 and its IRR-A shall be applicable.
- 6.3. No modification of Order Agreements during its lifetime shall be allowed.
- 6.4. The Ordering Agreement shall be valid only for a period as stated in the Bidding Documents but which, in any case, shall not exceed one (1) year from the time the Ordering Agreement was formally entered into by the parties.

7. DELIVERY ORDER CONTRACTS

- 7.1. When the procuring entity has determined the necessity for one or more of the items covered in the Ordering Agreement, it shall require the delivery of the line item identified in the Order Agreement List in the quantity stated therein and at the price for which it was awarded.

The procuring entity shall execute or issue a Delivery Order Contract in favor of the supplier to obligate the latter to make deliveries according to the terms and conditions stated in the Ordering Agreement.

- 7.2. The procuring entity may issue or execute as many Delivery Order Contracts for the same line item as may be needed; provided that the succeeding Delivery Order Contracts shall be with the same unit price as originally stated in the Ordering Agreement. And, except on conditions warranting the termination of the Ordering Agreement as provided in Section 8 hereof, there is no limit on the number of Delivery Order Contracts that may be executed or issued. No other

costs are authorized unless otherwise specified in the Ordering Agreement.

- 7.3. Should the price indicated in the Ordering Agreement, for any reason, become higher than the prevailing market rate at the time of demand for delivery, and the procuring entity fails to favorably negotiate for a price equal to, or lower than, the prevailing rate, the procuring entity shall not execute or issue a Delivery Order Contract in favor of the supplier but shall conduct another public bidding to determine the most suitable offer.
- 7.4. The procuring entity may execute or issue Delivery Order Contracts requiring delivery to multiple destinations or performance at multiple locations.

8. IMPLEMENTATION AND TERMINATION OF ORDERING AGREEMENTS

- 8.1. Without prejudice to the provisions of applicable laws, rules, and guidelines, the Ordering Agreement shall automatically terminate under the following conditions:
 - i. When the total ABC for the project has been exhausted regardless of the actual number of items procured or of the unit quantity per item; and
 - ii. When the one-year period duration of the contract have expired.
- 8.2. All other rules governing contract implementation and termination under R.A. 9184, its IRR-A, and relevant Guidelines or Resolutions shall be applicable.

9. EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.