

**PUBLIC-PRIVATE PARTNERSHIP GOVERNING BOARD**

**Policy Circular No. 05A-2016**

March 7, 2016

**FOR : All Heads of Departments, Bureaus, Offices, Commissions, Authorities and Implementing Agencies of the National Government, Including Government-Owned and/or Controlled Corporations, Government Financial Institutions, and State Universities and Colleges**

**SUBJECT : POLICY CIRCULAR ON APPOINTMENT OF PROBITY ADVISORS FOR PPP PROCUREMENT**

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**1. Introduction**

- 1.1. The Government is committed to ensure fair, impartial, transparent, and efficient Public-Private Partnership (PPP) procurement process. Probity is an important aspect of this commitment as the Government invites domestic and international investments into infrastructure.
- 1.2. Probity relates to maintaining integrity of the PPP procurement process to provide:
- i. *Fairness*, by ensuring conformity to the procurement process, as provided in the bidding documents;
  - ii. *Transparency*, by ensuring that bid evaluations are in accordance with bid parameters;
  - iii. *Stakeholder Confidence*, by preserving public and bidder confidence in government procurement processes; and
  - iv. *Accountability*, by improving defensibility of government decisions to external scrutiny.
- 1.3. All PPP procurements shall conform to expected probity standards in which clear procedures are outlined in the bidding documents and the interests of government and of bidders are established, understood, and observed throughout the procurement process. All bidders shall be treated consistently and equitably in accordance with these procedures, and decisions shall be made in a transparent manner.

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## **2. Objective**

- 2.1. This circular aims: (i) to uphold the policies of the State of providing procedures that will assure transparency and competitiveness in the bidding and award of projects, and of ensuring strict compliance by the Government and the Project Proponent of their respective obligations and undertakings; (ii) to institutionalize the appointment of Probity Advisors for PPP procurements, who will manage and provide an independent opinion on probity issues that may arise during the procurement process; and (iii) to confirm that the concluded process has met the probity requirements.

## **3. Applicability**

- 3.1. This Policy Circular shall be applicable to all national PPP projects that fulfill the following criteria:
  - i. large PPP projects with whole of life cost amounting to PhP20 billion or more or as maybe determined by the PPP Governing Board; or
  - ii. complex projects, regardless of amount, as determined and justified by the government agency implementing the PPP project (Implementing Agency).

## **4. Role of Probity Advisors**

- 4.1. The Probity Advisor shall, at each stage of the PPP procurement process, perform the following duties, among others:
  - i. act as an independent observer and critic on all aspects of the procurement process from commencement up to contract signing with the selected bidder;
  - ii. provide insights on the PPP procurement process to determine whether relevant government guidelines and appropriate policies are being complied with;
  - iii. ensure that the process is impartial and fair to all bidders, with no bidder being given an advantage over another or unfairly discriminated against;
  - iv. protect confidential information;
  - v. highlight potential conflict-of-interest situations, as they arise; and
  - vi. report any unlawful acts or concerns that occurred during the procurement process.

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## **5. Reporting by Probity Advisors**

- 5.1. The Probity Advisor shall prepare written reports for submission to the Implementing Agencies and to the PPP Center in case procurement is undertaken using the Project Development and Monitoring Facility (PDMF).
- 5.2. The final report shall include, among others, the results of the probity assessment and the independent opinion of the Probity Advisor on the entire procurement process. Details on the specific reports and timing of submission shall be included in the terms of engagement of the Probity Advisor.
- 5.3. The reports submitted by the Probity Advisors, in their final accepted versions, shall be considered public documents after the procurement process has been completed.
- 5.4. The Probity Advisor shall be allowed full and free access to all documents, records and meetings in all stages and aspects of the PPP procurement process.

## **6. Procurement of Probity Advisors**

- 6.1. The procurement of Probity Advisors shall be undertaken in accordance with Republic Act No. 9184, otherwise known as "The Government Procurement Reform Act" (GPRA), and its Implementing Rules and Regulations (IRR). Consistent with the GPRA and its IRR, if expressly provided under a Treaty or International or Executive Agreement, the procurement procedures and guidelines of the donor-foreign government or international financing institution shall be used for foreign-funded procurement of Probity Advisors.
- 6.2. Implementing Agencies may also access the PDMF, established under Executive Order No. 8 issued on 09 September 2010, as amended by Executive Order No. 136 issued on 28 May 2013, in procuring Probity Advisors. Procurement of Probity Advisors from the PDMF shall be in accordance with the agreed terms of selection process and contracting under the relevant Grant/Technical Assistance Agreement on PDMF, between the Government and its donor partners.
- 6.3. Once appointed, the Probity Advisor shall sign a Conflict of Interest clause to ensure its independence and integrity.
- 6.4. As a general rule, the engagement of Probity Advisor shall be made prior to the commencement of PPP procurement process. However, in exceptional cases (i.e. non-availability of funds), the Probity Advisor may be engaged even after the PPP procurement process has commenced.

## **7. Compensation of Probity Advisors**

- 7.1. The cost of Probity Advisors shall be shared equally by the concerned Implementing Agency and the winning bidder. If procured using the PDMF, the cost of Probity Advisors shall be recovered in full plus a cost recovery fee from the winning bidder for successfully tendered PPP projects. If the PPP project is not successfully tendered, the cost shall be reimbursed by the concerned Implementing Agency.

**8. Repealing Clause**

8.1. This Policy Circular supersedes and replaces Policy Circular No. 05-2015 dated March 25, 2015.

**9. Separability Clause**

9.1. If any provision of this Policy Circular is held invalid, all other provisions shall remain valid and in effect.

**10. Effective Date**

10.1. This Policy Circular shall take effect immediately upon approval by the PPP Governing Board.

*I hereby certify that this policy circular was approved by the PPP Governing Board at its meeting held on March 7, 2016.*



**ANDRE C. PALACIOS**  
Undersecretary and Executive Director  
Head, PPP Governing Board Secretariat