

PUBLIC-PRIVATE PARTNERSHIP GOVERNING BOARD

Resolution No. 2018-03-03

March 22, 2018

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 : GUIDELINES ON APPOINTMENT OF PROBITY ADVISORS FOR PPP PROCUREMENT

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 procurement¹ 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.

¹ Refers to the procedures related to the public bidding of PPP projects as specified in Republic Act 6957, as amended, and its Implementing Rules and Regulations.

2. Objective

- 2.1. These guidelines aim: (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 ensure that the procurement process has met the probity requirements.

3. Applicability

- 3.1. These guidelines shall be applicable to all PPP projects that fulfill the following criteria:
- i. large PPP projects with whole of life cost amounting to PhP20 billion or more or as may be 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 provide guidance and advice 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.

5. Reporting by Probity Advisors

- 5.1. The Probity Advisor shall prepare written reports for submission to the Implementing Agencies, the PPP Governing Board, and to the PPP Center, in accordance with the terms of engagement as mentioned in Section 5.2 hereof.
- 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 Project Development and Monitoring Facility (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. A Probity Advisor shall be engaged prior to the commencement of a PPP procurement process, during which, a Probity Plan shall be developed to identify potential probity issues or risks at every stage of the procurement process, and which shall clarify the extent of the Probity Advisor's accountability.
- 6.5. Once appointed, the Probity Advisor shall sign a Non-Disclosure Agreement and a Conflict of Interest clause to ensure its independence and integrity. The Conflict of Interest clause shall require the Probity Advisor to comprehensively disclose any and all potential threats to independence, including conflicts of interest, both prior to and at particular instances during service engagement when said conflicts actually arise.

7. Compensation of Probity Advisors

- 7.1. The fees of a Probity Advisor shall be shared equally by the concerned Implementing Agency and the winning bidder. The payment sharing provision shall be included as a post-award requirement under the Instruction to Bidders document.
- 7.2. The PPP Center, through its PDMF, may assist the concerned Implementing Agency in engaging a Probity Advisor, subject to the Implementing Agency's commitment to reimburse the advances made from the PDMF for the fees of the Probity Advisors plus a cost recovery fee.

8. Repealing Clause

- 8.1. These guidelines supersede and replace PPP Governing Board Resolution No. 2017-02-02 dated February 14, 2017.


9. Separability Clause

- 9.1. If any provision of these guidelines is held invalid or unconstitutional, all other provisions not affected thereby shall remain valid and in effect.

10. Effective Date

- 10.1. These guidelines shall take effect immediately upon approval by the PPP Governing Board.

I hereby certify that the approval ad referendum of these guidelines was ratified by the PPP Governing Board at its meeting held on March 22, 2018.


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