

ANNEX B

INTERIM GUIDELINES ON CONDUCTING NEGOTIATIONS BY THE EFFECTIVITY OF THE PPP CODE AND BEFORE THE EFFECTIVITY OF ITS IRR

1. The Implementing Agency shall commence the negotiation process of projects falling under Rule 4.3(b) of the interim guidelines by issuing a formal notice addressed to Original Proponent, copy furnished the PPP Center.

The formal notice to commence negotiation shall include the initial mechanics of the negotiations, the commencement date, and the authorized representatives of the Implementing Agency.

2. To facilitate efficient negotiations, the initial mechanics which is indicated in the notice to commence negotiations, shall include, at the minimum, the following elements:
 - a. Timeline for the completion of negotiations, including the commencement date;
 - b. Modalities of communication between the Implementing Agency and the Original Proponent, e.g. face-to-face, virtual, hybrid;
 - c. Proposed house rules during negotiations, which shall include proposed rights and obligations, who shall preside over the proceedings, procedures for negotiating terms and decision-making, and documentation, among others;
 - d. Management of conflict of interest, e.g., disclosure of business relationships and close personal affiliations, inhibition from the performance of duties in connection to the project in case a conflict of interest arises; and
 - e. Next steps in case of successful negotiation or failure of negotiation.

At least three (3) calendar days prior to the commencement date of the negotiations, the Implementing Agency and the Original Proponent shall agree in writing on the final mechanics of the negotiations.

3. The Implementing Agency shall designate, through a special order, permanent representatives to the Negotiation Committee for the Unsolicited Proposal. Such designated representatives must have the authority to negotiate and make decisions on behalf of the Implementing Agency.

Designated representatives may consist of the following:

- a. One (1) team lead officially designated by the Head of Implementing Agency;
- b. One (1) legal officer;
- c. One (1) officer knowledgeable in finance; and
- d. One (1) officer knowledgeable in the technical aspects and/or management and operations of the project.

In the case of co-grantors, each Implementing Agency shall have adequate representation in the Negotiation Committee.

4. The Original Proponent shall also designate permanent representatives to the Negotiation Committee. The Original Proponent shall, within seven (7) calendar days upon receipt of the issuance of the notice to commence negotiations, notify in writing the Implementing Agency of its duly authorized representatives, copy furnished the PPP Center. Attached to such notice shall be the following:
 - a. document/s authorizing the designated representatives to negotiate and make decisions on its behalf, and declaring that they have no potential or actual conflicts of

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interest, i.e., they are not related to the Implementing Agency and designated representatives of the Implementing Agency by consanguinity or affinity up to the third civil degree, and that they are not involved in projects which may be in competition with the Unsolicited Proposal; and

- b. comments on the initial mechanics, if any.

As a general rule, designated representatives of the Implementing Agency and the Original Proponent shall be kept at a minimum to facilitate more efficient negotiations.

5. The Implementing Agency may also invite other government agencies with expertise in areas relevant to the project to assist them in the negotiation process.
6. Designated representatives shall avoid conflicts of interest at all times, pursuant to Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. In case a conflict of interest arises for any of the designated representatives, the concerned parties shall inhibit themselves from the performance of their duties in connection to the project.
7. At any time prior to conducting negotiations, the Implementing Agency may begin the procurement of transaction advisors/consultants to assist in the negotiation process.