MEMORANDUM CIRCULAR

TOPIC
THE BJMP’S ANTI-CORRUPTION POLICY ON PROCUREMENT

SUB-TOPIC
PRESCRIBES MANDATES, PROHIBITED ACTS & TRANSACTIONS AND INSTITUTION, INVESTIGATION, PROSECUTION & ADJUDICATION OF ADMINISTRATIVE ACTION OF PROCUREMENT PERSONNEL

I. REFERENCES

A. R.A. No. 9184 “Government Procurement Reform Act of 2003”
B. The 2016 Revised Implementing Rules and Regulations of R.A. No. 9184
C. R.A. No. 3019 “Anti-Graft and Corrupt Practices Act”
D. R.A. No. 6713 “Code of Conduct and Ethical Standards for Public Officials and Employees”
E. P.D. No. 46 dated November 10, 1972 “Making it punishable for public officials and employees to receive and for private persons to give gifts on any occasion, including Christmas”
F. 2017 Comprehensive BJMP Administrative Machinery
G. 2017 Rules on Administrative Cases in the Civil Service
H. Commission on Audit Circular No. 77-48, January 31, 1977

II. POLICY STATEMENT

It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers which constitute graft or...
corrupt practices or which may lead thereto. The Bureau of Jail Management and Penology (BJMP) therefore, mandates every personnel to maintain honesty and responsibility in all transactions with the public.

In line with the said state principle and the zero-tolerance dogma of the BJMP on all forms of corruption, this Policy is hereby created to serve as a source of information and guidance to all procurement personnel involved in all procurement activities of the Jail Bureau as regards their respective duties and responsibilities to ensure a transparent and corrupt-free procurement process in the BJMP.

III. SCOPE

This policy applies to all procurement personnel who are involved in the Jail Bureau’s procurement processes.

IV. DEFINITION OF TERMS

A. Procurement - refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the BJMP
B. Procurement Personnel - refers to the Head of the Procuring Entity (HoPE), members of the Bids and Awards and Committee (BAC), members of the Technical Working Group (TWG), members of the BAC secretariat, and the members of the Technical Inspection and Acceptance Committee (TIAC)

C. Bid - refers to signed offer or proposal submitted by a supplier, manufacturer, distributor, contractor or consultant in response to the bidding documents  

D. Head of the Procuring Entity (HoPE) - refers to the head of the BJMP, or his duly authorized official and Regional Directors of the BJMP Regional Offices

E. Bids and Awards and Committee (BAC) - composed of at least 5 but not more than 7 members of unquestionable integrity and procurement proficiency, created in accordance with the Implementing Rules and Regulations of RA No. 9184 to undertake the procurement process

F. Technical Working Group (TWG) - composed of technical, financial, and/or legal experts created to assist the BAC in the technical, financial, and legal aspects of the procurement process

2 Sec. 5, 2016 Revised IRR of R.A. No. 9184

Prepared By:

JO1 Jake L Basilan
JNOR Staff, Procurement Section
Directorate for Logistics

Noted By:

J/CSUPT LEO P BALDON
Director of the Directorate for Logistics

Reviewed By:

J/CSUPT ALLAN S IRAL, CESE
Deputy Chief for Administration of the
Jail Bureau/QMR

Approved By:

J/DIR DEOGRA CIAS C YARAYAN, CESE
Chief, BJMP
G. BAC Secretariat - provides administrative support to the BAC and the TWG

H. Technical Inspection and Acceptance Committee (TIAC) - oversees the extent and nature of compliance with agency management's policies, rules and procedures; the proper functioning of management controls over operations and resources; the reliability and usefulness of financial and statistical data; the effective protection and utilization of manpower and assets; and the effectiveness of operating activities and personnel performance.  

I. Gift - refers to a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof.

J. Receiving any gift - includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

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3 Commission on Audit Circular No. 77-48, January 31, 1977
4 Sec. 3, R.A. No. 6713, February 20, 1989
5 Sec. 2, R.A. No. 3019, August 17, 1960

Prepared By:

JO1 Jake L Basilan
JNOR Staff, Procurement Section
Directorate for Logistics

Noted By:

J/CURP LEO P BALDON
Director of the Directorate for Logistics

Reviewed By:

J/CQUSPT ALLAN S IRAL, CESE
Deputy Chief for Administration of the Jail Bureau/QMR

Approved By:

J/DIR DEGRACIAS C TAPAYAN, CESE
Chief, BJMP
K. Conflict of interest- arises when a public official or employee is a member of a board or has a substantial interest in a business, and the interest of such business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.6

L. Disciplining Authority- refers to the a) President of the Republic of the Philippines for uniformed personnel holding the rank of at least Jail Chief Superintendent; b) Secretary of the Interior and Local Government for uniformed personnel holding the rank of Jail Senior Superintendent; c) Chief BJMP for non-uniformed personnel and uniformed personnel with the rank of Jail Inspector to Jail Superintendent as well as Jail Officer 1 to Senior Jail Officer 4 assigned at the National Headquarters and those undergoing schooling, training or on detail; and d) Regional Director for uniformed personnel holding the rank of Jail Officer 1 to Senior Jail Officer 4 assigned in their respective regions.7

M. Prima Facie Evidence - is defined as evidence good and sufficient on its face. Such evidence as in the judgment of the law is sufficient to establish a given fact or chain of facts constituting the party’s claim or defense and which if not rebutted or contradicted will remain sufficient.8

V. MANDATE OF PROCUREMENT PERSONNEL

6 Sec. 3, R.A. No. 6713, February 20, 1989
7 Sections 1 and 2, Rule III, 2017 Comprehensive BJMP Administrative Machinery
8 Sec. 1, Rule II, Ibid.

Prepared By:

Reviewed By:

Approved By:

JO1 Jake L Basilan
JNOR Staff, Procurement Section
Directorate for Logistics

J/CSUPT ALLAN S IRAL, CESE
Deputy Chief for Administration of the
Jail Bureau/QMR

J/DIR DEOGRAACIAS C. TARAYAN, CESE
Chief, BJMP
The BJMP’s anti-corruption policy requires all procurement personnel:

1. To observe transparency in the procurement process and in the implementation of procurement contracts;

2. To afford equal opportunity to all qualified and eligible private contracting parties to participate in the public bidding;

3. To uphold the public interest over and above personal interest;\(^9\)

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.\(^4\)

4. To reveal any conflict of interest in the procurement process for subsequent appropriate action;

5. To maintain a superior standard of integrity and not to engage in any unlawful, dishonest, immoral or deceitful conduct;

\(^9\) Sec. 4, R.A. No. 6713, February 20, 1989
\(^10\) Sec. 3, R.A. No. 3019, August 17, 1960
6. Not to extend extraordinary attention or hospitality to, nor seek opportunity for cultivating familiarity with persons and entities involved in the procurement process;

7. Not to accept any gift, bequest, or favor from any one in line with the performance of official functions, except as may be allowed by law;

8. To observe due diligence in the performance of official functions;

9. To dispose of the procurement transactions promptly and decide disputes within the reglementary period provided by law;

10. Not to employ any coercive scheme to influence the participation of persons in the procurement process or collude with suppliers to affect the competitive nature of the public bidding;

11. To refrain from influencing in any manner the outcome of a public bidding or the resolution of disputes in relation thereto;
12. To be vigilant against any attempt to subvert the integrity of the procurement process and should forthwith resist any pressure from whatever source intended to influence the performance of official functions;

13. To take or initiate appropriate disciplinary measures against procurement personnel for unprofessional conduct upon discovery thereof;

14. To keep the secrecy of all confidential information pertaining to the procurement process; and

15. To observe the "No Contact Rule" which prohibits any form of communication between the procurement personnel and the bidders regarding matters connected to their bids from bid evaluation until the issuance of the Notice of Award.11

VI. PROHIBITED ACTS AND TRANSACTIONS:

All procurement officials shall be subjected to appropriate legal actions when found responsible for the commission of the following infractions:

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11 Sec. 33, 2016 Revised IRR of R.A. No. 9184
1. Directly or indirectly receiving or soliciting any gift or benefit, for himself or for any other person, in connection with any transaction involving the procurement process between the BJMP and any other party in any occasion when such gift or benefit is given by reason of his official position;

The offense is committed "regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions".\(^\text{12}\)

Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this policy.\(^\text{13}\)

2. "Directly or indirectly having financial and material interest in any transaction requiring the approval of one’s office"\(^\text{14}\) involving the procurement process.

Financial and material interest is defined as pecuniary or proprietary interest by which a person will gain or lose something.\(^\text{15}\)

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\(^{12}\) P.D. No. 46, November 10, 1972
\(^{13}\) Sec 14, R.A. No. 3019, August 17, 1960
\(^{14}\) Sec. 50, 2017 Rules on Administrative Cases in the Civil Service, July 3, 2017
\(^{15}\) Ibid.
3. Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for personal gain, or to give advantage to one supplier, or to discriminate against one interested party.\textsuperscript{16}

4. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of Bids or other documents;

5. Opening any sealed bid including but not limited to bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of bids or other documents;\textsuperscript{17}

6. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of bids or other documents;\textsuperscript{18}

7. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular bidder for personal gain;\textsuperscript{19}

\textsuperscript{16} Ibid.
\textsuperscript{17} Sec. 65, 2016 Revised IRR of R.A. No. 9184
\textsuperscript{18} Ibid.

Prepared By: 
JO1 Jake L Basilan  
JNOR Staff, Procurement Section  
Directorate for Logistics

Noted By: 
J/CSUPT LEO P BALDON  
Director of the Directorate for Logistics

Reviewed By: 
J/CSUPT ALLAN S IRAL, CESE  
Deputy Chief for Administration of the Jail Bureau/QMR

Approved By: 
J/DIR DEOGRAFICAS O. TAPAYAN, CESE  
Chief, BJMP
8. Splitting of contracts which exceed procedural purchase limits and competitive bidding;\(^{20}\)

9. When the head of the agency abuses the exercise of his power to reject any and all bids with manifest preference to any bidder who is closely related to him;\(^{21}\)

10. Disclosing or misusing confidential or classified information officially known by reason of one's office and not made available to the public, to further one's private interests or give undue advantage to anyone, to prejudice the public interest;\(^{22}\) and

11. Directly or indirectly making any form of communication with the prospective bidders regarding matters connected to their bids from the period of bid evaluation until the issuance of the Notice of Award.

However, the BAC, through its Secretariat, may ask in writing the bidder for a clarification of its bid. All responses to requests for clarification shall be in writing.\(^{23}\)

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\(^{19}\) Ibid.

\(^{20}\) Sec. 65, 2016 Revised IRR of R.A. No. 9184

\(^{21}\) Ibid.

\(^{22}\) Sec. 50, 2017 Rules on Administrative Cases in the Civil Service , July 3, 2017

\(^{23}\) Sec. 33, 2016 Revised IRR of R.A. No. 9184

Prepared By:

JO1 Jake L Basilan
JNOR Staff, Procurement Section
Directorate for Logistics

Reviewed By:

J/CSUPT ALLAN S IRAL, CESE
Deputy Chief for Administration of the Jail Bureau/QMR

Approved By:

J/DIR DEOGRAFIAS D'APAYAN, CESE
Chief, BJMP
Mere inquiry or follow-up on the status of a procurement activity, i.e., the stage or progress of the bidding process where the procurement activity is at, is not within the scope of the prohibited communication contemplated under the rules, and may thus be accepted and responded to by the BAC. Accordingly . . . the response of the procuring entity should only indicate the status of the procurement activity and not include any other information relative to the evaluation of bids, such as, but not limited to, the result of the evaluation process, outcome of the post-qualification, and the name of the winning bidder.24

VII. INSTITUTION, INVESTIGATION, PROSECUTION AND ADJUDICATION OF ADMINISTRATIVE ACTION

A. INSTITUTION OF ADMINISTRATIVE ACTION

Persons having personal knowledge of the commission of infractions of this Policy are mandated to file a complaint before the disciplining authority of the subject procurement personnel for the subsequent investigation and prosecution of the persons liable thereto. The BJMP shall assure the protection and prevention of all kinds of discrimination against the complainant as a result of the reporting of the infraction.

24 G.P.P.B.'s N.P.M. No. 017-2011, September 28, 2011
B. INVESTIGATION OF ADMINISTRATIVE ACTION

The disciplining authority shall forward all complaints to the Directorate for Investigation and Prosecution (DIP) or Regional Investigation and Prosecution Division, as the case may be, for the proper conduct of investigation.25

C. PROSECUTION OF ADMINISTRATIVE ACTION

All formal charges shall be filed before the Hearing Offices which have original and concurrent jurisdiction over all procurement personnel charged with administrative offenses.26

D. ADJUDICATION OF ADMINISTRATIVE ACTION

The decision of the Regional Director, Chief BJMP, Secretary of DILG, or the Office of the President as the case may be, shall become final after the lapse of fifteen (15) days within which to file an appeal or motion for reconsideration reckoned from the date of receipt of the respondent and/or his counsel, if any.27

25 Sections 1-4, Rule IV, 2017 Comprehensive BJMP Administrative Machinery
26 Sections 5-13, Rule IV, 2017 Comprehensive BJMP Administrative Machinery
27 Sec. 9, Ibid.
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All other administrative legal matters, including the penalty to be imposed and the legal remedies for violations of this policy, shall refer to the 2017 Comprehensive BJMP Administrative Machinery.

VIII. SEPARABILITY CLAUSE:

In the event that any provision or part of the policy be declared unauthorized or rendered invalid by a competent authority, those provisions not affected by such declaration shall remain valid and effective.

IX. REPEALING CLAUSE

All other existing issuances, which are inconsistent with this policy, are hereby rescinded or modified accordingly.

X. EFFECTIVITY

This policy shall take effect immediately.

Prepared By:

JO1 Jake L Basilan
JNOR Staff, Procurement Section
Directorate for Logistics

Reviewed By:

J/CSUPT ALLAN S IRAL, CESE
Deputy Chief for Administration of the Jail Bureau/QMR

Approved By:

J/DIR DEOGRAFIAS O. TAPAYAN, CESE
Chief, BJMP

Noted By:

J/CSUPT LEO P BALDON
Director of the Directorate for Logistics