

[GPPB RESOLUTION NO. 013-2005, August 05, 2005]

APPROVING AND ADOPTING THE GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS THROUGH NEGOTIATED PROCUREMENT UNDER SEC. 54.2 (D) OF IRR-A OF RA 9184 AND BY ADMINISTRATION

WHEREAS, Republic Act No. 9184 (R.A. 9184), otherwise known as "Government Procurement Reform Act" and its Implementing Rules and Regulations Part A (IRR-A) took effect on January 26, 2003 and October 8, 2003, respectively; WHEREAS, under Section 53 (b) of the IRR-A, in exceptional cases expressed therein, the procuring entity has the option to undertake infrastructure projects through negotiated procurement, by administration or, in high security risk areas, through the Armed Forces of the Philippines (AFP);

WHEREAS, the Government Procurement Policy Board (GPPB), through GPPB Resolution 08-2004, adopted and approved the Guidelines for the Implementation of Projects Undertaken "By Administration" or Force Account purported to standardize and provide rules for the implementation of projects undertaken by all Departments, Bureaus, Offices and Agencies of the National Government, Government Owned and Controlled Corporations, Government Financing Institutions and Local Government Units, under the aforementioned concept;

WHEREAS, under the above-stated guidelines, unless otherwise provided by law, projects costing not more than Two Million Pesos (P2,000,000.00) may be undertaken by administration or force account under the following circumstances: (a) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities; or (b) when there has been failure of public bidding for the second time as provided under Section 35 of RA 9184 and its IRR-A;

WHEREAS, there is dearth of rules and regulations defining the concept of "by administration" and governing its use as a mode of implementing infrastructure project, as provisions of already existing laws, rules, or regulations do not clarify the conditions for its applicability and the details for its regulations;

WHEREAS, while implementation of infrastructure projects "by administration" is, technically, a concept beyond procurement, its implications overreaches into the domain of government acquisition and affects policies thereon; thus, the GPPB, in exercise of its mandate to protect national interest in all matters affecting public procurement, deems it necessary to clarify the concept and provide for the rules and regulations concerning its use and application;

WHEREAS, also pursuant to Section 53 (b) of the IRR-A, where in the cases mentioned therein, the procuring entity may resort, among others, to negotiated procurement, either through (1) short-listing of at least three (3) bidders that will be invited to submit bids per Section 54.2 (b) of the IRR-A, or (2) direct negotiations per Section 54.2 (d) of the IRR-A;

WHEREAS, Section 54.2 (d) the said IRR-A provides that for item (b) of Section 53 of RA 9184 and its IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred;

WHEREAS, in order to clarify and further provide details for the application of Negotiated Procurement under Section 54.2 (d) of the IRR-A of RA 9184, it is essential that guidelines therefore be promulgated by the GPPB;

NOW, THEREFORE, premises considered, WE, the Members of the GOVERNMENT PROCUREMENT POLICY BOARD, by virtue of the powers vested on US by law, hereby RESOLVE to approve and adopt, as WE hereby approve and adopt Guidelines for the Implementation of Infrastructure Projects through Negotiated Procurement under Section 54.2 (d) of IRR-A of RA 9184 and By Administration.

This resolution shall take effect immediately.

Adopted: 05 August 2005

(SGD.) ROMULO L. NERI
Secretary
Department of Budget and Management

Signed by other representatives from:

Department of National Defense

Department of Health

Department of Energy

Department of Trade and Industry

Department of Science and Technology

Department of Transportation and Communications

Private Sector Representative

Attested by:

(SGD.) JOSE MARTIN C. SYQUIA
Board Secretary, GPPB
Executive Director, GPPB-TSO

ANNEX A

GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE
PROJECTS THROUGH NEGOTIATED PROCUREMENT UNDER SEC. 54.2
OF IRR-A OF RA 9184 AND BY ADMINISTRATION

1.0 Purpose and Coverage

These guidelines shall standardize and provide rules for the use of the alternative method of Negotiated Procurement prescribed under Section 54.2 (d) of the IRR-A of RA 9184 and the implementation of projects undertaken "by administration" by all Departments, Bureaus, Offices and Agencies of the National Government (NGA), Government-Owned and/or Controlled Corporations (GOCCs), Government Financing Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs). Projects undertaken "by administration" by the Armed Forces of the Philippines Corps of Engineers (AFPCOE) shall be governed by the guidelines issued by the GPPB through Resolution 09-2005 dated 28 April 2005.

2.0 Definition of Terms

For purposes of these guidelines, the following terms shall be defined as follows:

2.1 By Administration. The procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency thru its own personnel.

2.2 Force Account. Refers to the implementation of an infrastructure project "by administration" and is applicable when, due to the happening of unforeseen events, there is a need to immediately complete infrastructure works, or when any work outside the original Contract is necessary for the completion of the works but the costs involved cannot be determined at the outset. Although supervised by the procuring entity, the remaining work is contracted out to a qualified contractor and paid at actual cost plus an agreed mark-up not to exceed ten percent (10%) mark-up. Actual cost is supported by receipt, vouchers, payroll, etc. or the prevailing cost items in the locality. The amount of remaining works to be completed is not more than ten percent (10%) of the contract/project and not to exceed Two Million pesos (Php. 2,000,000.00).

2.3 Implementing Agency. Shall refer to any Department, Bureau, Office and Agency of the National Government, or to any Government-Owned and/or Controlled Corporation, Government Financing Institution, State University or College, and Local Government Unit undertaking the construction of an infrastructure project.

2.4 Job-Contractor. Refer to a person or entity who carries out, under his own responsibility, supervision and control, the performance or completion of a specific job, service or work which has been farmed out by another for the latter's benefit.

2.5 Job-Order. Refers to employment of individuals to undertake piece or lump sum works, or intermittent jobs of short duration not exceeding six months on a daily basis.

2.6 Labor-Only Contractor. Refers to a person or entity that engages in the supply of workers/laborers to an employer but does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed perform activities directly related to the principal business of the employer.