



## RESOLUTION NO. 12-2007

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### **AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT**

**WHEREAS**, under Section 23, Article II of the 1987 Constitution, the State shall encourage formation of non-governmental organizations (NGOs), community-based or sectoral organizations that promote the welfare of the nation;

**WHEREAS**, Republic Act No. 9358, or the Supplemental Budget for FY 2006, and Republic Act No. 9401, or the General Appropriations Act for FY 2007, provides an amount of Two Hundred Fifty Million Pesos (P250,000,000.00) for the construction of school buildings to be made available to NGOs;

**WHEREAS**, the President's Veto Message dated 17 October 2006 and 22 March 2007 subjects the implementation of the foregoing provisions to guidelines to be issued by the Government Procurement and Policy Board (GPPB)

**WHEREAS**, under Section 63 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. (R.A.) 9184, the Government Procurement Policy Board (GPPB) is authorized to formulate and amend public policies, rules and regulations, and amend whenever necessary, the IRR-A of R.A. 9184;

**WHEREAS**, during the 6<sup>th</sup> Inter-Agency Technical Working Group (IATWG) Meeting on the 15<sup>th</sup> day of June at Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City, the IATWG duly considered and agreed to endorse for the approval of the GPPB the amendment of Section 53 of the IRR-A of R.A. 9184 to include as one of the instances under Negotiated Procurement procedures entering into an agreement with a NGO when an appropriation law or ordinance earmarks a specific amount or project for NGOs;

**WHEREAS**, the IATWG also deliberated on and agreed to endorse for the approval of the GPPB the proposed Guidelines on NGO Participation in Public Procurement;

**NOW, THEREFORE**, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to confirm, adopt and approve the recommendation of the IATWG, as **WE** hereby confirm, adopt and approve the amendment to the IRR-A of R.A. 9184 as follows:



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### Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects, and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x

- (j) **When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.**

**FURTHER RESOLVED**, as we hereby **FURTHER RESOLVE** to confirm, adopt, and approve the Guidelines on Non-Governmental Organization in Public Procurement, herein attached as Annex A.

This resolution shall take effect immediately.

**APPROVED** this 29<sup>th</sup> day of June, 2007 at Pasig City, Philippines

(Sgd.)

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**ROLANDO G. ANDAYA, JR.**  
Secretary  
Department of Budget and Management

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**ROMULO L. NERI**

Secretary  
National Economic and Development  
Authority

(Sgd.)

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**NATIONAL ECONOMIC AND  
DEVELOPMENT AUTHORITY**

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**DEPARTMENT OF NATIONAL  
DEFENSE**

(Sgd.)

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**DEPARTMENT OF EDUCATION**

(Sgd.)

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**DEPARTMENT OF HEALTH**

(Sgd.)

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**DEPARTMENT OF THE INTERIOR  
AND LOCAL GOVERNMENT**

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**DEPARTMENT OF ENERGY**



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**DEPARTMENT OF PUBLIC WORKS  
AND HIGHWAYS**

(Sgd.)

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**DEPARTMENT OF FINANCE**

(Sgd.)

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**DEPARTMENT OF TRADE AND  
INDUSTRY**

(Sgd.)

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**DEPARTMENT OF SCIENCE AND  
TECHNOLOGY**

(Sgd.)

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**DEPARTMENT OF TRANSPORTATION  
AND COMMUNICATIONS**

(Sgd.)

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**PRIVATE SECTOR REPRESENTATIVE**

Attested by:

(Sgd.)

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**RUBY U. ALVAREZ**  
Board Secretary, GPPB  
Executive Director, GPPB-TSO

## **GUIDELINES ON NON-GOVERNMENTAL ORGANIZATION PARTICIPATION IN PUBLIC PROCUREMENT**

### **1. POLICY STATEMENT**

Section 23, Article II of the Philippine Constitution prescribes that the State shall encourage the participation of Non-Governmental Organizations (NGOs), community-based, or sectoral organizations in the promotion of the welfare of the nation.

As a general rule, all procurement shall be done through competitive public bidding. However, when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs, it is the intent of Congress to give due preference to NGOs.

### **2. SCOPE AND APPLICATION**

These guidelines prescribe the allowable modes of selecting an NGO in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs.

These guidelines shall apply to national government, its branches, constitutional offices, departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or controlled corporations, government financial institutions, and local government units.

### **3. PURPOSE**

These guidelines are formulated to meet the following objectives:

- 3.1 If the procuring entity decides to conduct public bidding, to prescribe the rules and procedures that shall govern public bidding limited to NGOs; and
- 3.2 If the procuring entity decides to enter into negotiated procurement under Section 53 (j) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184), to provide the necessary steps and procedures in the selection of the NGO.

### **4. GENERAL GUIDELINES**

- 4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the

procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A.

- 4.2 A Non-Governmental Organization or NGO refers to a non-stock, non-profit domestic corporation duly registered with the Securities and Exchange Commission (SEC) or a cooperative duly registered with the Cooperative Development Authority (CDA) committed to the task of socio-economic development and established primarily for providing goods and services to the public.
- 4.3 The selected NGO shall keep and maintain separate savings account and accounting records in accordance with generally accepted accounting rules and principles, subject to visitorial audit and examination by the procuring entity or the Commission on Audit.
- 4.4 Unless otherwise provided by law, technical specifications prescribed for the School Building Program under the Department of Education shall be the same as those prescribed by the Department of Public Works and Highways.
- 4.5 For the erasure of doubt, the NGO, whether selected through public bidding or negotiated procurement, shall be required to post a performance security in accordance with Section 39 of the IRR-A of R.A. 9184 and a warranty in accordance with Section 62 of the IRR-A of R.A. 9184.

## **5. PUBLIC BIDDING LIMITED TO NGOs**

- 5.1 If the procuring entity decides to select the NGO through competitive public bidding, it shall advertise and post the Invitation to Apply for Eligibility and to Bid in accordance with Section 21.2.1 of the IRR-A.
- 5.2 In addition to the information enumerated under Section 21.1 of the IRR-A, the Invitation to Apply for Eligibility and to Bid shall also include (i) the legal basis or appropriation law or ordinance which earmarks a specific amount or project to NGOs; and (ii) a statement that the project shall be limited to NGOs.
- 5.3 The determination of an NGO’s eligibility shall be based on the submission of the documents enumerated under Sections 23.6 and 24.7.1 of IRR-A. However:
  - 5.3.1 In lieu of the registration certificate issued by the Securities and Exchange Commission (SEC), a cooperative may submit a

registration certificate issued by the Cooperatives Development Authority (CDA);

- 5.3.2 In addition to the legal eligibility documents, a participating NGO must submit its latest articles of incorporation in order that the procuring entity may determine that it falls within the definition of NGO under Item 4.2 of these Guidelines;
- 5.3.3 To establish the financial stability of the participating NGO, audited financial statements for the past three (3) years must be submitted under Section 23.6 (1) (i) of the IRR-A;
- 5.3.4 Participating NGOs need not submit the financial document prescribed under Section 23.6 (1) (j) of the IRR-A.
- 5.4 Other stages of the bidding process shall be observed in accordance with the relevant provisions of the IRR-A of R.A. 9184.

## **6. NEGOTIATED PROCUREMENT UNDER SECTION 53 (J) OF IRR-A**

- 6.1 To ensure transparency in the selection of NGO through negotiated procurement, posting shall be done in accordance with Section 21.2.4 of the IRR-A of R.A. 9184.
- 6.2 After the required posting period, the procuring entity shall invite at least three (3) prospective NGOs to submit sealed price quotations.
- 6.3 The procuring entity shall likewise require submission of the complete project proposal together with supporting feasibility studies, designs, plans, blueprints, budgets and charts.
- 6.4 On the date specified in the notice, the procuring entity shall open the price quotations and determine the Lowest Calculated Bid (LCB). Consistent with the nature of an NGO, no profit should be included in its bid. Thus, the procuring entity shall ensure that the LCB does not include any profit margin or mark-up.
- 6.5 After determination that the proposal submitted by the NGO with the Lowest Calculated Bid complies with the technical requirements of the project, the procuring entity shall require submission of the following eligibility documents to ensure that said NGO is technically, legally, and financially capable to undertake the proposed project:

### *Legal Documents*

- a) SEC or CDA registration certificate;
- b) Latest articles of incorporation
- c) Valid and current mayor’s permit/municipal license;
- d) Certificate of G-EPS registration;
- e) Taxpayer’s Identification Number; and
- f) Latest tax returns and tax clearance pursuant to Executive Order No. 398, s. of 2005;

*Technical Documents*

- g) Statement of all its ongoing and completed government and private contracts within the relevant period, where applicable, including contracts awarded but not yet started, if any in accordance with Section 23.6 (f) of the IRR-A of R.A. 9184; and

- h) In the case of procurement of infrastructure projects, the prospective bidder’s statement of:

f.1 Availability of its key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts;

f.2 Personnel performing functions that are regulated by laws of the Philippines are registered professionals authorized by the appropriate regulatory body to practice those and allied professions

f.2 Availability of equipment that it owns, has under lease, and/or has under purchase agreements that may be used for construction contracts, provided that ownership of equipment is not a requisite for eligibility.

*Financial Documents*

- i) Audited financial statements for the past three (3) years, stamped “received” by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, its total and current assets and liabilities.

- 6.6 After submission of the eligibility documents, the procuring entity shall enter into a Memorandum of Agreement (MOA) with the NGO which prescribes:

- a) the terms of reference for the project
- b) commitment to comply with technical requirements of the project

- c) systems and procedures for project monitoring and implementation
- d) timelines, such as, but not limited to, date of completion, periodic inspection or evaluation schedule, and reporting
- e) terms of payment, which shall be in accordance with Item 7 herein

6.7 To guarantee its faithful performance, the selected NGO shall post a Performance Security upon the signing of the MOA in accordance with Section 39 of the IRR-A.

6.8 After performance of its obligations under the MOA, the selected NGO shall likewise submit a warranty security in accordance with Section 62 of the IRR-A.

## **7. TERMS OF PAYMENT**

7.1 Payment to the NGO shall be made on a staggered basis. As a general rule, the selected NGO shall not receive additional payment unless reporting/liquidation requirements of the previous payment shall have been complied with.

7.2 Release of funds to the NGO shall follow the payment schedule prescribed by the MOA or contract.

7.3 No funds may be released prior to signing of the MOA or contract.

7.4 The selected NGO shall return any amount not utilized upon completion of the project.

## **8. EFFECTIVITY**

These guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general nationwide circulation.