

**APPROVING AND ADOPTING THE
AMENDMENT OF SECTION 17.6 OF THE IMPLEMENTING RULES AND
REGULATIONS PART A OF REPUBLIC ACT NO. 9184 AND THE
GUIDELINES FOR THE DESIGN AND BUILD SCHEME FOR
INFRASTRUCTURE PROJECTS**

WHEREAS, Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) took effect on 26 January 2003 and 8 October 2003, respectively;

WHEREAS, the Government Procurement Policy Board (GPPB) under Section 63 of the IRR-A of R.A. 9184 is mandated to formulate and amend public procurement policies, rules, and regulations, and amend whenever necessary, the IRR-A of R.A. 9184;

WHEREAS, Section 17.6 of the IRR-A of R.A. 9184 expressly recognizes the use of the design and build schemes in the procurement of infrastructure projects;

WHEREAS, the Inter-Agency Technical Working Group (IATWG), in its 7th regular meeting held last 27 July 2007, recommended the issuance of guidelines to govern the implementation of design and build schemes for infrastructure projects and the amendment of Section 17.6 for clarity and ease of reference to the proposed guidelines on design and build schemes;

WHEREAS, the IATWG, in its 7th and 9th regular meetings held last 27 July 2007 and 14 September 2007, respectively, deliberated and agreed on the proposed amendment to Section 17.6 of the IRR-A of R.A. 9184 and the guidelines for the implementation of the design and build scheme for infrastructure projects, and accordingly recommends them to the GPPB for its approval;

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 adopt and approve, as **WE** hereby adopt and approve, the amendment of Section 17.6 of the IRR-A of R.A. 9184 by adding a second paragraph thereto which reads:

“The procedures for the procurement and contract implementation of infrastructure projects using a design and build scheme shall be in accordance with the provisions of Annex “G” of this IRR-A.”

FURTHER RESOLVED, to approve and adopt, as Annex “G” of the IRR-A, the “Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects”, which is attached as Annex “A” and made an integral part of this resolution .



RESOLUTION NO. 22-2007

This resolution shall take effect immediately.

APPROVED this 28th day of September 2007 at Pasig City, Philippines

(Sgd.)

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

AUGUSTO B. SANTOS

OIC-Director General
National Economic and Development
Authority

(Sgd.)

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL
DEFENSE**

(Sgd.)

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

DEPARTMENT OF ENERGY

(Sgd.)

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

DEPARTMENT OF FINANCE

(Sgd.)

**DEPARTMENT OF TRADE AND
INDUSTRY**

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

(Sgd.)

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

(Sgd.)

PRIVATE SECTOR REPRESENTATIVE



RESOLUTION NO. 22-2007

Attested by:

(Sgd.)

RUBY U. ALVAREZ
Board Secretary, GPPB

ANNEX “G”
**GUIDELINES FOR THE PROCUREMENT AND IMPLEMENTATION OF
CONTRACTS FOR DESIGN AND BUILD INFRASTRUCTURE PROJECTS**

1. SCOPE AND APPLICATION

These guidelines shall govern the procurement and implementation of contracts for design and build infrastructure projects and shall supplement applicable provisions of Republic Act No. 9184 (RA 9184) and its Implementing Rules and Regulations Part A (IRR-A) in particular Section 17.6 and Annex E.

2. PURPOSE

These guidelines are formulated to determine the conditions for the use of the design and build scheme for infrastructure projects and the procedures for the implementation thereof.

3. GUIDING PRINCIPLES

The procuring entity, prior to resorting to the design and build scheme, should consider the following advantages and disadvantages of said scheme:

3.1. Advantages:

- a) In making use of the design and build scheme, the procuring entity is assured that only one contractor shall bear all responsibilities, which shall include the risks related to design;
- b) The design and construction periods, as well as the final project cost, will definitely be reduced; and,
- c) The procuring entity is assured of the quality of the structure, considering that only infrastructure and design experts are involved in a construction utilizing the design and build scheme.

3.2. Disadvantages:

- a) Procuring entities should, however, take into account that in utilizing the design and build scheme for a particular project, contractors are given too much discretion in determining the project cost and there is difficulty in predicting its final cost until the actual commencement of construction; and

- b) Considering that the extent of the integration of design and construction of the project is exceptionally dependent on the contractor, there may be cases when the end-result may not be exactly in accordance with what the procuring entity has required.

4. DEFINITION OF TERMS

- a. **Approved Budget for the Contract (ABC).** This shall be a lump sum amount that shall cover the cost of design and construction works (*at the option of the procuring entity*) based on the conceptual design and performance specifications and in accordance with applicable provisions of the law or agency guidelines. The ABC shall be calculated based on either the approximate quantities of work of the conceptual design, from standardized designs or from cost records of previous projects of similar kind.
- b. **Bidding Documents for Design and Build Scheme.** These shall basically be similar to the bidding documents for infrastructure projects and shall also include the performance specifications and parameters to be followed by the design and build contractors and the method for allocation of risks for the design and build contract, among others.
- c. **Conceptual Design.** This shall describe the general idea of the procuring entity with regard to the completed facility and shall identify the scope or physical components and structures, specific outputs and requirements of the structures and proposed methods of construction, where necessary.
- d. **Design and Build Projects.** This refers to infrastructure projects where the procuring entity awards a single contract for the architectural/engineering design and construction to a single firm, partnership, corporation, joint venture or consortium.
- e. **Performance Specifications and Parameters.** The procuring entity shall define the required performance specifications and criteria and its means of measurement based on the operating outputs and in accordance with appropriate design and construction standards, legal and technical obligations and any other relevant government commitments as required by existing laws and regulations. It shall not be drawn up to favor a particular solution, design and construction method.
- f. **Preliminary Investigations.** These shall include, among others, information on soil, geotechnical, hydrologic, hydraulic, seismic, traffic, and environmental conditions that shall be used to define project design criteria,

to set the basis for any changed conditions and establish preliminary project cost estimates.

- g. **Preliminary Survey and Mapping.** These shall determine boundaries and provide stationing along control lines to establish feature and design criteria location, and identify existing and future right-of-way limits and construction easements associated with the procuring entity's conceptual design.
- h. **Project Description.** This shall define the objectives, purpose, limitations or constraints, as well as the allocation of risks between the procuring entity and the winning bidder.
- i. **Utility Locations.** The procuring entity shall provide information on existing utilities in and around the project's area.

5. CONDITIONS FOR THE USE OF THE DESIGN AND BUILD SCHEME

5.1. The Design and Build scheme shall be applied under any of the following cases:

- a. For flagship, priority and fast track projects that need to be completed on a tight completion schedule, as included in the Medium Term Public Investment Program (MTPIP) for national projects and in the Regional Development Investment Plan (RDIP) for regional and provincial projects;
- b. For infrastructure projects requiring advanced engineering or construction technologies or whose intellectual property rights belong to private companies;
- c. For infrastructure projects where design, equipment, plant and construction can be provided exclusively by a company or where manufacturer's know-how is important in the construction of such facility; or
- d. For small projects where there are previously approved drawings or standardized designs and an innovation in design and construction methods under the design and build scheme will result in lower costs and higher quality projects. Examples of these are school buildings, rural health units, among others.

5.2. All design and build projects shall be included in the Annual Procurement Plan (APP) of the procuring entity concerned and shall be subject to prior

approval by the head of the procuring entity or his/her duly authorized representative.

6. CREATION OF DESIGN and BUILD COMMITTEE

The procuring entity may create a Design and Build Committee (DBC) composed of highly technical personnel experienced in the field of architecture, engineering and construction in the particular type of project to be bid. The DBC shall assist the project management office (PMO) in the preparation of the conceptual design and performance specifications and parameters, review of detailed engineering design and supervision of the project. It shall, likewise, assist the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) in the evaluation of technical proposals in accordance with the criteria set in the bid documents.

7. PRELIMINARY DESIGN AND CONSTRUCTION STUDIES

No bidding and award of design and build contracts shall be made unless the required preliminary design and construction studies have been sufficiently carried out and duly approved by the head of the procuring entity that shall include, among others, the following:

- i. Project Description
- ii. Conceptual Design
- iii. Performance Specifications and Parameters
- iv. Preliminary Survey and Mapping
- v. Preliminary Investigations
- vi. Utility Locations
- vii. Approved Budget for the Contract
- viii. Proposed Design and Construction Schedule
- ix. Minimum requirements for a Construction Safety and Health Program for the project being considered
- x. Tender/Bidding Documents

The above data are for reference only. The procuring entity does not guarantee that these data are fully correct, up to date, and applicable to the project at hand. The contractor is responsible for the accuracy and applicability of all data, including the above, that it will use in its design and build proposal and services.

The acquisition of right-of-way and the conduct of eminent domain proceedings shall still be the responsibility of the procuring entity, which shall include a preliminary budget for this purpose.

8. DETAILED ENGINEERING REQUIREMENTS

- 8.1.** Upon award of the design and build contract, the winning bidder shall be responsible for the preparation and submission of all necessary detailed engineering investigations, surveys and designs in accordance with the provisions of Annex “A” of this IRR-A, (with the exception of the bid documents and the ABC).
- 8.2.** The procuring entity shall ensure that all the necessary schedules with regard to the submission, confirmation and approval of the detailed engineering design and the details of the construction methods and procedures shall be included in the contract documents.
- 8.3.** The procuring entity shall review, order rectification, and approve or disapprove – for implementation only - the submitted plans within these schedules. All instructions for rectification shall be in writing stating the reasons for such rectification. The design and build contractor shall be solely responsible for the integrity of the detailed engineering design and the performance of the structure irrespective of the approval/confirmation by the procuring entity.

9. ELIGIBILITY REQUIREMENTS

- 9.1.** The eligibility requirements for Design and Build Infrastructure Projects shall comply with the applicable provisions of Sections 23-24 of IRR-A.
- 9.2.** A modified set of requirements integrating eligibility documents and criteria for infrastructure projects and consulting services shall be adopted, as follows:
 - i. Class “A” Documents (Legal, Technical and Financial Documents) and Class “B” Documents

The prospective bidder shall submit all the required Class “A” and Class “B” documents for infrastructure projects and the following:

- a) relevant statements of all on-going, completed, awarded but not yet started design/design and build related contracts, curriculum vitae of key staff, partners or principal officers; and

- b) valid licenses issued by the Professional Regulatory Commission (PRC) for design professionals in accordance with the provisions under Section 24.7.1 (Technical Documents) of this IRR.

ii. Eligibility Criteria

- a) The eligibility of design and build contractors shall be based on the legal, technical and financial requirements abovementioned. In the technical requirements, the design and build contractor (as solo or in joint venture/consortia) should be able to comply with the experience requirement under the IRR-A of R.A. 9184, where one of the parties (in a joint venture/consortia) should have at least one similar project, both in design and construction, with at least 50% of the cost of the ABC.
- b) If the bidder has no experience in design and build projects on its own it may enter into partnerships or joint venture with design or engineering firms for the design portion of the contract.
- c) The relevant provisions under Section 23.11.2.1 of the IRR-A of R.A. 9184 on eligibility requirements shall be observed, with the following exceptions:

Joint ventures/consortia among Filipino contractors and consultants or among Filipino contractors and foreign consultants shall be allowed subject to pertinent laws and the relevant provisions of the IRR-A of R.A. 9184. The joint venture/consortia shall be jointly and severally responsible for the obligations and the civil liabilities arising from the design and build contract: *Provided, however,* That Filipino ownership or interest thereof shall be at least seventy five percent (75%); *Provided further,* That joint ventures/consortia in which Filipino ownership or interest is less than seventy-five percent (75%) may be eligible where the structures to be built require the application of techniques and/or technologies which are not adequately possessed by Filipinos and that Filipino ownership or interest shall not be less than twenty-five percent (25%); *Provided, finally,* that when the design services in which the joint venture wishes to engage involve the practice of professions regulated by law, all those who will actually perform the services shall be Filipino citizens and registered professionals authorized by the appropriate regulatory body to practice those professions and allied professions and where foreign designers are required, the foreign designer must be authorized by the appropriate

Philippine Government professional regulatory body to engage in the practice of those professions and allied professions.

10. SUBMISSION AND RECEIPT OF BIDS

10.1. In the submission of bids, the first envelope (Technical Proposal) shall contain all the required documents for infrastructure projects under Section 25.3 (b) of the IRR-A of R.A 9184 and the following additional documents:

- i. Preliminary Conceptual Design Plans in accordance with the degree of details specified by the procuring entity;
- ii. Design and construction methods;
- iii. List of design and construction personnel, to be assigned to the contract to be bid, with their complete qualification and experience data; and
- iv. Value engineering analysis of design and construction method.

10.2. The second envelope (Financial Proposal) shall contain all the required documents for infrastructure projects under Section 25.3 (b) of the IRR-A of R.A 9184 and the following additional documents:

- i. Lump sum bid prices, which shall include the detailed engineering cost, in the prescribed Bid Form;
- ii. Detailed estimates including a summary sheet indicating the unit prices of construction materials, labor rates and equipment rentals used in coming up with the bid; and
- iii. Cash flow by the quarter and payments schedule.

11. BID EVALUATION

For the detailed evaluation of the design and build proposals a two-step procedure shall be adopted by the BAC, which may be undertaken with the assistance of the DBC.

11.1. First-Step Procedure:

- i. The first step of the evaluation shall involve the review of the preliminary conceptual designs and track record submitted by the contractor as indicated in the bid documents using a non-discretionary “pass/fail” criteria that involve compliance with the following requirements:
 - a. Adherence of preliminary design plans to the required performance specifications and parameters and degree of details;
 - b. Concept of approach and methodology for detailed engineering, design and construction with emphasis on the clarity, feasibility, innovativeness and comprehensiveness of the plan approach, and the quality of interpretation of project problems, risks, and suggested solutions;
 - c. Quality of personnel to be assigned to the project which covers suitability of key staff to perform the duties of the particular assignments and general qualifications and competence including education and training of the key staff;
- ii. For complex or unique undertakings, such as those involving highly specialized or advanced engineering technology, eligible bidders may be required, at the option of the agency concerned, to make an oral presentation within fifteen (15) calendar days after the deadline for submission of technical proposals.

11.2. Second-Step Procedure:

Only those bids that passed the above criteria shall be subjected to the second step of evaluation.

The BAC shall open the financial proposal of each “passed” bidder and shall obtain the correct calculated prices. The financial bids as so calculated shall be ranked, in ascending order, from lowest to highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid (LCB).

12. POST-QUALIFICATION and AWARD OF THE CONTRACT

- 12.1.** The LCB shall be subject to post-qualification in accordance with Section 34, Rule X of this IRR-A to determine its responsiveness to the eligibility and bid requirements. If after post-qualification the Lowest Calculated Bid is determined to be post-qualified it shall be considered the Lowest Calculated and Responsive Bid (LCRB) and the contract shall be awarded to the bidder. In case of post-disqualification of the LCB, the procedure under Section 34 shall also be followed.
- 12.2.** The head of the procuring entity shall approve or disapprove the recommendations of the BAC within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the LCRB.
- 12.3.** The head of the procuring entity concerned shall award the contract to the said bidder pursuant to the provisions of Section 37, Rule XI of this IRR-A.

13. CONTRACT IMPLEMENTATION

As a rule, contract implementation guidelines for the procurement of infrastructure projects shall comply with Annex “E” of this IRR-A. The following provisions shall supplement these procedures:

- 13.1.** No works shall commence unless the contractor has submitted the required documentary requirements and the procuring entity has given written approval. Work execution shall be in accordance with reviewed and approved documents.
- 13.2.** The contractor shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances which may affect the works and shall prepare and submit all necessary documents specified by the procuring entity to meet all regulatory approvals as specified in the contract documents.
- 13.3.** The Contractor shall submit a detailed program of work within fourteen (14) calendar days after the issuance of the Notice to Proceed for approval by the procuring entity that shall include, among others:
 - i.** The order in which it intends to carry out the work including anticipated timing for each stage of design/detailed engineering and construction;

- ii. Periods for review of specific outputs and any other submissions and approvals;
 - iii. Sequence of timing for inspections and tests as specified in the contract documents;
 - iv. General description of the design and construction methods to be adopted;
 - v. Number and names of personnel to be assigned for each stage of the work;
 - vi. List of equipment required on site for each major stage of the work; and
 - vii. Description of the quality control system to be utilized for the project.
- 13.4.** Any errors, omissions, inconsistencies, inadequacies or failure submitted by the contractor that do not comply with the requirements shall be rectified, resubmitted and reviewed at the contractor's cost. If the Contractor wishes to modify any design or document which has been previously submitted, reviewed and approved, the contractor shall notify the procuring entity within a reasonable period of time and shall shoulder the cost of such changes.
- 13.5.** As a rule, changes in design and construction requirements shall be limited only to those that have not been anticipated in the contract documents prior to contract signing and approval. The following guidelines shall govern approval for change or variation orders:
- i. Change Orders resulting from design errors, omissions or non-conformance with the performance specifications and parameters and the contract documents by the contractor shall be implemented by the contractor at no additional cost to the procuring entity.
 - ii. Provided that the contractor suffers delay and/or incurs costs due to changes or errors in the procuring entity's performance specifications and parameters, he shall be entitled to either one of the following:
 - a. an extension of time for any such delays under Section 10 of Annex E; or

- b. payment for such costs as specified in the contract documents, provided, that the cumulative amount of the variation order does not exceed ten percent (10%) of the original project cost.

- 13.6.** The contract documents shall include the manner and schedule of payment specifying the estimated contract amount and installments in which the contract price will be paid.
- 13.7.** The contractor shall be entitled to advance payment subject to the provisions of Section 4 of Annex E.
- 13.8.** The procuring entity shall define the quality control procedures for the design and construction in accordance with agency guidelines and shall issue the proper certificates of acceptance for sections of the works or the whole of the works as provided for in the contract documents.
- 13.9.** The contractor shall provide all necessary equipment, personnel, instruments, documents and others to carry out specified tests.
- 13.10.** All design and build projects shall have a minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice, however, to the liabilities imposed upon the engineer/architect who drew up the plans and specification for a building sanctioned under Section 1723 of the New Civil Code of the Philippines.
- 13.11.** The contractor shall be held liable for design and structural defects and/or failure of the completed project within the warranty periods specified in Section 62.2.2 of the IRR-A.

14. AMENDMENTS AND FORMS

In the implementation of these guidelines, the GPPB may issue additional guidelines or introduce modifications thereto through the amendment of its specific provisions as the need arises, as well as, formulate, approve and disseminate standard bidding documents, forms and evaluation documents, whenever necessary.

15. EFFECTIVITY

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide



circulation and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.