

September 18, 2003

EXECUTIVE ORDER NO. 109-A

AMENDING EXECUTIVE ORDER NO. 109 DATED MAY 27, 2002 PRESCRIBING THE RULES AND PROCEDURES ON THE REVIEW AND APPROVAL OF ALL GOVERNMENT CONTRACTS TO CONFORM WITH REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT

WHEREAS, in line with the government's program of good governance, Executive Order No. 109 dated May 27, 2002 entitled "Streamlining The Rules And Procedures On The Review and Approval Of All Contracts Of Departments, Bureaus, Offices, And Agencies Of The Government, Including Government-Owned Or Controlled Corporations And Their Subsidiaries" was issued for the expeditious implementation of development projects and the speedy delivery of basic services while promoting transparency, competitiveness, and accountability in government transactions;

WHEREAS, Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, which was enacted into law on January 10, 2003, likewise declared it the policy of the State to promote the ideals of good governance, with a view to transparency, competitiveness, streamlining, accountability and public monitoring in the procurement process of Government Contracts;

WHEREAS, Republic Act No. 9184 consolidated the procurement processes of Government Contracts, including the procurement of infrastructure projects, goods and consulting services, and lease of goods and real estate, among others;

WHEREAS, it has become necessary to amend the provisions of Executive Order No. 109 dated May 27, 2002 to make it conform with the provisions of Republic Act No. 9184;

WHEREAS, the Government Procurement Policy Board (GPPB) and the National Economic and Development Authority (NEDA) recommend the issuance of this Executive Order;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. *Policy Requiring Public Bidding.* — It is the policy of this Administration that all Government Contracts of Government Agencies, including procurement contracts, shall be awarded through open and competitive public bidding, save in exceptional cases provided by law and applicable rules and regulations, as described in Section 3 of this Executive Order.

For this purpose, a Government Agency shall refer to the various units of the Government, including a department, bureau, office, instrumentality, government-owned and/or -controlled corporation or its subsidiary, or state college or university (Cf. Section 2(4) of Executive Order No. 292 dated July 25, 1987, otherwise known as the Administrative Code of 1987).

SECTION 2. *Approval of Government Contracts Awarded Through Public Bidding.* — Except for Government Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall have full authority to give final approval and/or enter into all Government Contracts of their respective Government Agencies, awarded through public bidding, regardless of the amount involved.

The Heads of the procuring entities may delegate in writing this full authority to give final approval and/or enter into Government Contracts awarded through public bidding as circumstances may warrant (i.e., decentralization of procurement in a Government Agency),

subject to such limitations imposed by the Head of the procuring entity concerned (Cf. Section 5(j), Republic Act No. 9184).

As defined under Section 5(j) of Republic Act No. 9184, a Head of the procuring entity refers to (i) the head of the agency or his duly authorized official, for national government agencies, or (ii) the governing board or its duly authorized official, for government-owned and/or -controlled corporations.

SECTION 3. *Exceptions to Public Bidding.* — Sections 48 to 53 of Republic Act No. 9184 and its Implementing Rules and Regulations provide for exceptional cases where the procurement of infrastructure projects, goods and consulting services may be undertaken through alternative methods of procurement, other than through public bidding.

SECTION 4. *Approval of Government Contracts Entered Into Through Alternative Methods of Procurement, Other Than Through Public Bidding.*

a. *For Government Contracts Involving An Amount Of At Least Three Hundred Million Pesos (P300 Million).* — Where the Head of the procuring entity has made a determination that a Government Contract, including Government Contracts required by law to be acted upon and/or approved by the President, involving an amount of at least Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 3 hereof, the Head of the procuring entity shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the following requirements:

- i. An opinion from the Secretary of Justice that said Government Contract falls within the exceptions from public bidding; and
- ii. Approval from the Director-General of NEDA to proceed with a specific alternative method of procurement under the exceptional cases provided by law and applicable rules and regulations. This authority to approve shall be lodged with the Director-General of NEDA until such time that the GPPB created under Republic Act No. 9184 informs the NEDA in writing of its decision to exercise such authority.

After obtaining the foregoing requirements, except for Government Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall have full authority to give final approval and/or enter into Government Contracts of their respective Government Agencies, entered into through alternative methods of procurement allowed by law, other than through public bidding, where the Government Contract involves an amount of at least Three Hundred Million Pesos (P300 Million)

b. *For Government Contracts Involving An Amount Below Three Hundred Million Pesos (P300 Million).* — Except for Government Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall likewise have full authority to give final approval and/or enter into Government Contracts of their respective Government Agencies, entered into through alternative methods of procurement allowed by law, other than through public bidding, where the Government Contract involves an amount below Three Hundred Million Pesos (P300 Million).

The Heads of the procuring entities may delegate in writing this full authority to give final approval and/or enter into Government Contracts involving an amount of below Three Hundred Million Pesos (P300 Million) entered into through alternative methods of procurement allowed by law, other than through public bidding, as circumstances may warrant (i.e., decentralization of procurement in a Government Agency), subject to such limitations imposed by the Head of the procuring entity concerned (Cf. Section 5(j), Republic Act No. 9184).

SECTION 5. *Authority to Bind the Government.* — All Government Contracts shall require the approval and signature of the respective Heads of the procuring entities or their respective duly authorized officials, as the case may be, as required by law, applicable rules and regulations, and by this Executive Order, before said Government Contracts shall be considered approved in accordance with law and binding on the government, except as may be otherwise provided in Republic Act No. 9184. For Government Contracts required by law to be acted upon and/or approved by the President, Section 6 of this Executive Order governs the process by which such Government Contracts shall be considered entered into with authority and binding on the government.

The Heads of the procuring entities or their respective duly authorized officials, as the case may be, shall be responsible and accountable for ensuring that all Government Contracts they approve and/or enter into are in accordance with existing laws, rules and regulations and are consistent with the spending and development priorities of government.

All Government Contracts entered into in violation of the provisions of law, rules and regulations, and this Executive Order shall be considered contracts entered into without authority and are thus invalid and not binding on the government.

SECTION 6. *Government Contracts Requiring Presidential Action and/or Approval.* —
a. All Government Contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall not be signed until after the NEDA Board, which is chaired by the President, has favorably acted upon and/or approved the same.

b. All Government Contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall be submitted with complete documentation to NEDA, through its Director-General, within seven (7) days from the approval by the Head of the procuring entity concerned or his/its duly authorized official, as the case may be, for NEDA's review and evaluation.

Government Contracts submitted hereunder shall be accompanied by a complete execution copy of the contract, related agreements, annexes, other approvals and permits, including a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract, and accompanied by the requirements of Section 4(a) hereof where alternative methods of procurement were resorted to.

c. Within thirty (30) days from its receipt of the Government Contract with complete documentation, and any subsequent amendments or supplements thereto, NEDA shall submit its recommendation to the NEDA Board, which is chaired by the President, for appropriate action. The NEDA Board, at a meeting chaired by the President, shall then act and/or approve the Government Contract, as it deems appropriate.

d. Within seven (7) days from the date of the NEDA Board's action, NEDA, through its Director-General, shall formally notify the Head of the procuring entity concerned or his/its duly authorized official, as the case may be, of the action of the NEDA Board, including any comments thereon.

SECTION 7. *Governing Law for Government Contracts.* —

a. Contracts for the Procurement of Infrastructure Projects, Goods, and Consulting Services. Contracts for the procurement of infrastructure projects, goods, and consulting services shall be governed by Republic Act No. 9184 and its Implementing Rules and Regulations (Cf. Section 4, Republic Act No. 9184).

Contracts for the lease of goods and real estate shall be governed by Republic Act No. 9184 and its Implementing Rules and Regulations (Cf. Section 5(n), Republic Act No. 9184).

- b. Contracts for Acquisition of Right-of-Way, Site or Location for National Government Infrastructure Projects. Contracts for the acquisition of real property needed as right-of-way, site or location for national government infrastructure projects shall be governed by Republic Act No. 8974 (Cf. Section 5(n), Republic Act No. 9184).
- c. BOT Contracts. Contracts undertaken through Build Operate and Transfer (BOT) schemes and other variations shall be governed by Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations. TaCEHA
- d. ODA-funded Contracts. Government Contracts financed wholly or partly with Official Development Assistance (ODA) funds shall be governed by Republic Act No. 4860, as amended, Republic Act No. 8182, as amended by Republic Act No. 8555, and Republic Act No. 9184 and its Implementing Rules and Regulations (Cf. Section 4, Republic Act No. 9184)

The GPPB may issue guidelines for Government Contracts finance with ODA funds with the objective of promoting transparency, competitiveness, and accountability in government transactions, and, where applicable, complying with the requirements of an open and competitive public bidding, consistent with Republic Act No. 9184 and its Implementing Rules and Regulations (Cf. Section 4, Republic Act No. 9184).

SECTION 8. *Joint Venture Agreements.* — The NEDA, in consultation with the GPPB, shall issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, competitiveness, and accountability in government transactions and, where applicable, complying with the requirements of an open and competitive public bidding.

SECTION 9. *Transactions of Government Financial Institutions.* — Transactions of government financial institutions in the ordinary course of business shall not be covered by the provisions of this Executive Order. Such transactions shall instead be subject to applicable provisions of law and to guidelines, rules and regulations issued by the Department of Finance.

SECTION 10. *Submission of Government Contracts.* — With a view to creating a repository of all important Government Contracts, a complete copy of all Government Contracts involving an amount of at least Three Hundred Million Pesos (P300 Million) shall be submitted to NEDA, through its Director-General, within seven (7) days from the date of signing and/or approval thereof, accompanied with a complete copy of its related agreements, annexes, other approvals and permits, and a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract.

SECTION 11. *Splitting of Government Contracts.* — Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this Executive Order, especially the necessity of public bidding and the requirements for exceptions therefrom in accordance with Section 4(a) hereof.

SECTION 12. *Local Government Units.* — Procurement contracts of local government units, regardless of the source of funds, shall be subject to the provisions of Republic Act No. 9184 and its Implementing Rules and Regulations.

SECTION 13. *Prospective Application.* — All Government Contracts, including those presently being processed and/or reviewed in accordance with Executive Order No. 109 dated May 27, 2002, shall hereafter be processed and/or reviewed in accordance with this Executive Order.

SECTION 14. *Repeal and Amendment.* — Executive Order No. 109 dated May 27, 2002 is hereby repealed. All orders, issuances, memoranda and other Presidential issuances expressly repealed by Executive Order No. 109 dated May 27, 2002 shall remain repealed.

Memorandum Order No. 266 dated November 28, 1989 insofar as it relates to joint venture agreements with private entities, and Department of Public Works and Highways Circular No. 125, series of 1993 insofar as it relates to the lease of real estate, are hereby amended accordingly.

All other Presidential directives, issuances, orders, rules and regulations or parts thereof inconsistent with this Executive Order are likewise hereby repealed or modified accordingly.

SECTION 15. This Executive Order shall take effect immediately upon publication in two (2) newspapers of general circulation.

DONE in the City of Manila, this 18th day of September, in the year of our Lord Two Thousand and Three.