

June 27, 2005

**MEMORANDUM ORDER NO. 176**

**APPROVING AMENDMENTS TO SECTIONS 20.1; 23.6 NO. 2; 24.7.1 NO. 2; 25.2; 25.3; 33.4.1; 33.5; 37.3; 39.5; 54.2(b); 62.2; ANNEX D, 1.2; AND ANNEX D, 1.4, OF THE IMPLEMENTING RULES AND REGULATIONS PART A (IRR-A) OF REPUBLIC ACT NO. 9184**

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the Government Procurement Reform Act, was signed into law on January 10, 2003;

WHEREAS, pursuant to Section 75 of R.A. No. 9184, the Government Procurement Policy Board (GPPB), jointly with the members of the Joint Congressional Oversight Committee, formulated the Implementing Rules and Regulations Part A (IRR-A) of RA 9184, with Annexes "A" to "E", which was approved by the President of the Philippines on July 11, 2003;

WHEREAS, the joint participation of the Congressional Oversight Committee in the formulation of implementing rules and regulations has recently been declared unconstitutional by the Supreme Court in *Macalintal vs. Comelec*, G.R. No. 157013, July 2003;

NOW THEREFORE, I GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, hereby approve the amendments of the Implementing Rules and Regulation — Part A (IRR-A) of Republic Act (RA) 9184 as follows:

SECTION 1. Sections 20.1; 23.6 No. 2; 24.7.1 No. 2; 25.2; 25.3; 33.4.1; 33.5; 37.3; 39.5; 54.2(b); 62.2; Annex D, 1.2; and Annex D, 1.4 of the IRR-A of RA 9184 are hereby amended as follows:

Section 20. *Pre-procurement Conference*

20.1. . . . During this conference, the participants, led by the BAC, shall;

xxx                      xxx                      xxx

5. Review and agree on the number of eligible bidders to be included in the shortlist, from three to seven eligible bidders, and the minimum score required, as provided for in Section 24.15.2;

6. Review and agree on whether the quality-based or quality-cost based evaluation procedure shall be adopted in the selection of consultant, as provided for in Section 33.3.1; if the quality-cost based evaluation procedure, review and agree on the weights to be allocated to the technical and financial criteria and recommend to the head of the procuring entity for approval, as provided for in section 33.5;

7. Clarify that the specifications and other terms in the bidding documents are minimum requirements and that the bidder may submit an offer which provides for superior specifications and/or better terms and conditions to the Government at no extra cost, without any bonus, credit or premium in the bid evaluation; and

8. Reiterate and emphasize the importance of confidentiality during the bid evaluation process, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.

Section 23. *Eligibility Requirements for the Procurement of Goods and Infrastructure Projects*

23.6. Eligibility Check for the Procurement of Goods and Infrastructure Projects

xxx                      xxx                      xxx

2. Class "B" Documents —

a) Valid joint venture agreement, in case of a joint venture. Each member of the joint venture shall submit the required eligibility documents; and

b) XXX

Section 24. *Eligibility Requirements and Short Listing for Consulting Services*

24.7. Eligibility Check for the Procurement of Consulting Services

xxx                      xxx                      xxx

2. Class "B" Documents —

a) Valid joint venture agreement, in case of a joint venture. Each member of the joint venture shall submit the required eligibility documents; and

b) XXX

Section 25. *Submission and Receipt of Bids*

25.2. Eligibility requirements and bids submitted after the deadline shall not be accepted by the BAC.

25.3. The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:

A. *For the procurement of Goods:*

xxx                      xxx                      xxx

9. A sworn statement attesting compliance to the responsibilities of a Prospective or Eligible Bidder as provided in Section 17.7 of the IRR A;

10. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and

11. Other documents/materials as stated in the Instructions to Bidders.

B. *For the procurement of infrastructure projects:*

xxx                      xxx                      xxx

14. A sworn statement attesting compliance to the responsibilities of a Prospective or Eligible Bidder as provided in section 17.7 of the IRR A;

15. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and

16. Documents/materials to comply with other non-discretionary criteria and requirements as stated in the Instructions to Bidders.

C. *For the procurement of consulting services:*

xxx                      xxx                      xxx

8. A sworn statement attesting compliance to the responsibilities of a Prospective or Eligible Bidder as provided in Section 17.7 of the IRR-A;
9. A sworn affidavit of compliance with the Disclosure Provision under Section 47 of the Act in relation to other provisions of RA 3019; and
10. Other information and/or documents specified in the bidding documents.

Section 33. *Bid Evaluation of Short Listed Bidders for Consulting Services*

33.4.1. For the quality-based evaluation procedure, a two-stage procedure shall be adopted whereby each consultant shall be required to submit his technical and financial proposals simultaneously in separate sealed envelopes, and the evaluation of consultants shall be made based only on the technical proposals without consideration of the estimated cost or financial terms of the services. The BAC shall rank the consultants in descending order based on the numerical ratings of their technical proposals subject to Section 33.3 of this IRR-A and identify the Highest Rated Bid: Provided, however, that the Highest Rated Bid shall pass the minimum score required.

33.5 *Quality-Cost Based Evaluation Procedure*

. . . For this purpose, it is hereby clarified that, in case of a Quality-Cost Based Evaluation, as distinguished from a Quality-Based Evaluation, the financial proposals of the consultants who meet the minimum technical rating shall be opened on a separate date and time set by the BAC, and not during negotiations. Said consultants shall be notified of the date and time set for the opening of the financial proposal. . . . The weight of the technical criteria shall be adjusted accordingly such that their total weight in percentage together with the weight given to the financial proposal shall add to one hundred percent (100%). The methodology to be used in the evaluation of the financial proposal shall be described in the Instructions to Bidders. The BAC shall rank the consultants in descending order based on the combined numerical ratings of their technical and financial proposals and identify the Highest Rated Bid: Provided, however, That subsequent negotiations in accordance with Section 33.4.3 of this IRR-A shall still be undertaken with the first in rank consultant, except for item (e) thereof. Except for meritorious reasons, negotiations with any one consultant shall be completed within fourteen (14) calendar days. . . .

Section 37. *Notice and Execution of Award*

37.3. *Contract Signing*

The winning bidder or its duly authorized representative shall comply with all the remaining documentary requirements, if any, prior to formally entering into contract with the procuring entity concerned within ten (10) calendar days from receipt by the winning bidder of the Notice of Award.

The Procuring Entity shall enter into contract with the winning bidder within the same ten (10) day period provided that all the documentary requirements are complied with.

Section 39. *Performance Security*

39.5. For the procurement of infrastructure projects, the winning bidder shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to

order or change orders, extra work orders and supplemental agreements, as the case may be. The winning bidder shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

Section 54. *Terms and Conditions for the use of Alternative Methods.*

54.2. b) For items (a) and (b) of Section 53, in the case of goods and infrastructure projects, the procuring entity shall draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. However, the minimum period for each bidding procedure may be reduced. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed.

Section 62. *Warranty*

62.2 XXX

The warranty shall be stated in Philippine Pesos, shall remain effective during the applicable warranty period stated in Section 62.2 of the IRR-A and shall be returned only after the lapse of the said warranty period. The warranty shall be full for the first year, and renewable every year thereafter, subject to depreciation after the first year, on a straight line basis.

xxx xxx xxx

ANNEX "D"

CONTRACT IMPLEMENTATION GUIDELINES FOR THE PROCUREMENT OF GOODS,  
SUPPLIES AND MATERIALS

1. Amendment to Order

1.2. An amendment to order may be issued only in emergency cases or during fortuitous events requiring necessary adjustments within the general scope of the contract in any one or more of the following is required in order to fully meet the requirements of the project:

a) drawings, design or specifications, if the goods to be furnished are to be specifically manufactured for the Government in accordance therewith;

b) method of shipment or packing; or

c) place of delivery

1.4. Under no circumstances shall a supplier proceed to commence work under any amendment to order unless the same has been approved by the head of the procuring entity concerned or his duly authorized representative. As an exception to the rule the Regional Director/Head concerned may authorize the immediate start of work under any amendment to order in the event of emergencies to avoid detriment to public service, or damage to life and/or property or when time is of the essence: Provided, however, That the same is valid only on items up to the point where the cumulative increase in the contract cost which has not yet been duly fully approved by the head of the procuring entity concerned or his duly authorized representative does not exceed five percent (5%) of the original contract cost: Provided, further, That the corresponding amendment to order shall immediately be prepared and submitted for approval to the head of the procuring entity concerned or his duly authorized representative. For an amendment to order involving a cumulative amount exceeding five percent (5%) of the

original contract price, no work thereon shall be commenced unless the same has been approved by the head of procuring entity concerned or his duly authorized representative: Provided, That, the said cumulative amount does not exceed ten percent (10%) of the original contract price.

SECTION 2. All other provisions of the IRR-A of RA 9184 shall remain unchanged.

SECTION 3. This Memorandum Order shall take effect immediately upon its publication in a national newspaper of general circulation.

DONE in the City of Manila, this 27th day of June, in the year of Our Lord, Two Thousand Five.