



RESOLUTION NO. 07-2018

APPROVING AMENDMENTS TO SECTION 2, ANNEX “E” OF THE 2016 IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT (RA) NO. 9184 AND THE PHILIPPINE BIDDING DOCUMENTS FOR INFRASTRUCTURE PROJECTS

WHEREAS, Republic Act (RA) No. 9184 entitled “An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes,” took effect on 26 January 2003, while its 2016 Revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63(b) of Republic Act (R.A.) No. 9184, the Government Procurement Reform Act, and Section 63.1(b) of the 2016 revised Implementing Rules and Regulations (IRR) authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules and regulations, and amend, whenever necessary, the IRR;

WHEREAS, Section 43 of RA 9184 provides that the rules and guidelines for the implementation and termination of contracts awarded pursuant to the provisions of the Act shall be prescribed in the IRR.

WHEREAS, Annex “E” of the 2016 IRR of RA 9184 prescribes the *Contract Implementation Guidelines for Infrastructure Projects* (Guidelines for brevity);

WHEREAS, under the Guidelines, contractors are allowed to claim progress payments at least once a month based on the cumulative value of the quantities executed with reference to the items in the Bill of Quantities and that payments are based on unit price payment scheme;

WHEREAS, on 22 February 2018, the GPPB-Technical Support Office (TSO) received a letter from the Bases Conversion and Development Authority (BCDA) requesting for opinion on the legality of adopting a modified payment scheme in the procurement of government infrastructure projects on a turn-key basis, among others;

WHEREAS, upon initial review, the GPPB-TSO observed that adopting a modified payment scheme that will allow procuring entities to implement their infrastructure projects on a turn-key basis will require the amendment of existing provisions of Annex “E” of the IRR of RA 9184;

WHEREAS, on 16 April 2018, the GPPB-TSO received another letter from BCDA requesting the withdrawal of its original letter requesting for opinion;

WHEREAS, notwithstanding the withdrawal of the BCDA letter-request, the GPPB can proactively prescribe rules allowing a different payment scheme that may be utilized by other procuring entities implementing infrastructure projects;

WHEREAS, during the 2nd IATWG Meeting held on 10 May 2018, the GPPB-TSO presented the proposed amendments to Section 5, Annex “E” of the 2016 IRR of RA 9184 and the corresponding provisions of the Philippine Bidding Documents (PBDs) for Infrastructure Projects to reflect an alternative payment scheme in relation to the implementation of infrastructure projects on turn-key arrangements;

WHEREAS, after due consideration, the IATWG resolved to recommend to the GPPB the proposed amendments, subject to presentation of the pros and cons of adopting a new payment scheme for the implementation of infrastructure projects;

WHEREAS, during the 2nd Regular GPPB Meeting held on 18 May 2018, the GPPB-TSO presented proposed amendment to Section 5 of Annex “E” of the IRR of RA 9184 and the relevant provisions in the PBDs for Infrastructure Projects, as well as the pros and cons of the proposed amendments as directed by the IATWG;

WHEREAS, after careful review and due deliberations, the GPPB approved the recommendation of the IATWG to amend Section 5 of Annex “E” of the IRR of RA 9184 and the relevant provisions in the PBDs for Infrastructure Projects to reflect an alternative payment scheme in relation to the implementation of infrastructure projects;

NOW, THEREFORE, for and in view of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the amendment to Section 5 of Annex “E” of the IRR of RA 9184 or the *Contract Implementation Guidelines for Infrastructure Projects*, including the corresponding Clauses in the PBDs for Infrastructure Projects, a copy of which is attached as Annex “A”, and made an integral part hereof.

This Resolution shall take effect immediately.

APPROVED this 18th day of May 2018 at Pasig City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

(SGD)

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

DEPARTMENT OF EDUCATION

(SGD)

DEPARTMENT OF ENERGY

(SGD)

DEPARTMENT OF FINANCE

(SGD)

DEPARTMENT OF HEALTH

**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

(SGD)

**DEPARTMENT OF NATIONAL
DEFENSE**

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

DEPARTMENT OF TRANSPORTATION

(SGD)

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

**DEPARTMENT OF TRADE AND
INDUSTRY**

(SGD)

PRIVATE SECTOR REPRESENTATIVE



Annex “E” of the IRR of RA 9184 or Contract Implementation Guidelines for Infrastructure Projects

ORIGINAL	AMENDMENT
<i>Section 5.1, Progress Payment</i>	
<p>Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed</p>	<p>Once a month, the contractor may submit a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished. The SWA should show the amounts which the contractor considers itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustments made for approved variation orders executed. <u>Alternatively, the Procuring Entity may require in the Bidding Documents that statement of work accomplished or progress billing and the corresponding request for progress payment may only be submitted upon actual completion of the infrastructure project or a specific portion, segment, milestone or phase thereof.</u></p>
<i>Section 5.2, Progress Payment</i>	
<p>The procuring entity’s representative/project engineer shall check the contractor’s monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.</p>	<p>The procuring entity’s representative/project engineer shall check the contractor’s monthly SWA and certify the amount to be paid to the contractor as progress payment. Except as otherwise stipulated in the Instruction to Bidders, materials and equipment delivered on the site but not completely put in place shall not be included for payment.</p>
<i>Section 5.3 of Annex “E”, Progress Payment and GCC Clause 40.2 of the PBDs for</i>	

Infrastructure Projects

The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

- a) Cumulative value of the work previously certified and paid for.
- b) Portion of the advance payment to be recouped for the month.
- c) Retention money in accordance with the condition of contract.
- d) Amount to cover third party liabilities.
- e) Amount to cover uncorrected discovered defects in the works.

The procuring entity shall deduct the following from the certified gross amounts to be paid to the contractor as progress payment:

- a) Cumulative value of the work previously certified and paid for.
- b) Portion of the advance payment to be recouped *for the month*.
- c) Retention money in accordance with the condition of contract.
- d) Amount to cover third party liabilities.
- e) Amount to cover uncorrected discovered defects in the works.

5th Edition for the Philippine Bidding Documents (PBDs) for Infrastructure Projects

ORIGINAL	AMENDMENT
<i>GCC Clause 40.4</i>	
<p>The first progress payment may be paid by the Procuring Entity to the Contractor, provided that at least twenty percent (20%) of the work has been accomplished as certified by the Procuring Entity's Representative.</p>	<p>The first progress payment may be paid by the Procuring Entity to the Contractor, provided that at least twenty percent (20%) of the work has been accomplished as certified by the Procuring Entity's Representative, <u>unless otherwise provided in the SCC.</u></p>
<i>SCC Clause 40.4</i>	
	<p><i>Select one and delete the other:</i></p> <p>No further instructions.</p> <p>Or</p> <p>Progress payment shall be based on actual completion of the infrastructure project or a specific segment or portion thereof using the following schedule:</p> <p><i>[Indicate the schedule of payment based on actual completion of a specific segment or portion of the project]</i></p>
<i>GCC Clause 41.1</i>	
<p>The contractor shall submit to the Procuring Entity's Representative monthly statements of the estimated value of the work executed less the cumulative amount certified previously.</p>	<p>The contractor shall submit to the Procuring Entity's Representative monthly statements of the estimated value of the work executed less the cumulative amount certified previously, <u>except when a different payment scheme is adopted under GCC Clause 40.4, in which case, the statement may only be submitted in accordance with the schedule prescribed by the Procuring Entity.</u></p>
<i>GCC Clause 41.2</i>	
<p>The Procuring Entity's Representative shall check the Contractor's monthly statement and certify the amount to be paid to the contractor.</p>	<p>The Procuring Entity's Representative shall check the Contractor's monthly statement and certify the amount to be paid to the contractor.</p>