



APPROVING AND ADOPTING THE GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS THROUGH NEGOTIATED PROCUREMENT UNDER SEC. 54.2 (d) OF IRR-A OF RA 9184 AND BY ADMINISTRATION

WHEREAS, Republic Act No. 9184 (R.A. 9184), otherwise known as “Government Procurement Reform Act” and its Implementing Rules and Regulations Part A (IRR-A) took effect on January 26, 2003 and October 8, 2003, respectively;

WHEREAS, under Section 53 (b) of the IRR-A, in exceptional cases expressed therein, the procuring entity has the option to undertake infrastructure projects through negotiated procurement, by administration or, in high security risk areas, through the Armed Forces of the Philippines (AFP);

WHEREAS, the Government Procurement Policy Board (GPPB), through GPPB Resolution 08-2004, adopted and approved the Guidelines for the Implementation of Projects Undertaken “By Administration” or Force Account purported to standardize and provide rules for the implementation of projects undertaken by all Departments, Bureaus, Offices and Agencies of the National Government, Government Owned and Controlled Corporations, Government Financing Institutions and Local Government Units, under the aforementioned concept;

WHEREAS, under the above-stated guidelines, unless otherwise provided by law, projects costing not more than Two Million Pesos (P2,000,000.00) may be undertaken by administration or force account under the following circumstances: (a) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities; or (b) when there has been failure of public bidding for the second time as provided under Section 35 of RA 9184 and its IRR-A;

WHEREAS, there is dearth of rules and regulations defining the concept of “by administration” and governing its use as a mode of implementing infrastructure project, as provisions of already existing laws, rules, or regulations do not clarify the conditions for its applicability and the details for its regulation;

WHEREAS, while implementation of infrastructure projects “by administration” is, technically, a concept beyond procurement, its implications overreaches into the domain of government acquisition and affects policies thereon; thus, the GPPB, in exercise of its mandate to protect national interest in all matters affecting public procurement, deems it necessary to clarify the concept and provide for the rules and regulations concerning its use and application;



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WHEREAS, also pursuant to Section 53 (b) of the IRR-A, where in the cases mentioned therein, the procuring entity may resort, among others, to negotiated procurement, either through (1) short-listing of at least three (3) bidders that will be invited to submit bids per Section 54.2 (b) of the IRR-A, or (2) direct negotiations per Section 54.2 (d) of the IRR-A;

WHEREAS, Section 54.2 (d) the said IRR-A provides that for item (b) of Section 53 of RA 9184 and its IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred;

WHEREAS, in order to clarify and further provide details for the application of Negotiated Procurement under Section 54.2 (d) of the IRR-A of RA 9184, it is essential that guidelines therefore be promulgated by the GPPB;

NOW, THEREFORE, premises considered, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law, hereby **RESOLVE** to approve and adopt, as **WE** hereby approve and adopt Guidelines for the Implementation of Infrastructure Projects through Negotiated Procurement under Section 54.2 (d) of IRR-A of RA 9184 and By Administration.

This resolution shall take effect immediately.

APPROVED this 5th day of August 2005 at Pasig City, Philippines.

Sgd.

ROMULO L. NERI

Secretary

Department of Budget and Management

AUGUSTO B. SANTOS

Director General

National Economic and Development
Authority

Sgd.

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

**DEPARTMENT OF NATIONAL
DEFENSE**



RESOLUTION NO. 013-2005

Sgd.

DEPARTMENT OF EDUCATION

Sgd.

DEPARTMENT OF HEALTH

Sgd.

**DEPARTMENT OF INTERIOR AND
LOCAL GOVERNMENT**

DEPARTMENT OF ENERGY

Sgd.

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

DEPARTMENT OF FINANCE

Sgd.

**DEPARTMENT OF TRADE AND
INDUSTRY**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

**DEPARTMENT OF TRANSPORTATION
AND COMMUNICATIONS**

Sgd.

PRIVATE SECTOR REPRESENTATIVE

Attested by:

Sgd.

JOSE MARTIN C. SYQUIA
Board Secretary, GPPB
Executive Director, GPPB-TSO

GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS THROUGH NEGOTIATED PROCUREMENT UNDER SEC. 54.2 (d) OF IRR-A OF RA 9184 AND BY ADMINISTRATION

1.0 Purpose and Coverage

These guidelines shall standardize and provide rules for the use of the alternative method of Negotiated Procurement prescribed under Section 54.2 (d) of the IRR-A of RA 9184 and the implementation of projects undertaken “by administration” by all Departments, Bureaus, Offices and Agencies of the National Government (NGA), Government-Owned and/or Controlled Corporations (GOCCs), Government Financing Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

Projects undertaken “by administration” by the Armed Forces of the Philippines Corps of Engineers (AFPCOE) shall be governed by the guidelines issued by the GPPB through Resolution 09-2005 dated 28 April 2005.

2.0 Definition of Terms

For purposes of these guidelines, the following terms shall be defined as follows:

- 2.1 **By Administration.** The procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency thru its own personnel.
- 2.2 **Force Account.** Refers to the implementation of an infrastructure project “by administration” and is applicable when, due to the happening of unforeseen events, there is a need to immediately complete infrastructure works, or when any work outside the original Contract is necessary for the completion of the works but the costs involved cannot be determined at the outset. Although supervised by the procuring entity, the remaining work is contracted out to a qualified contractor and paid at actual cost plus an agreed mark-up not to exceed ten percent (10%) mark-up. Actual cost is supported by receipt, vouchers, payroll, etc. or the prevailing cost items in the locality. The amount of remaining works to be completed is not more than ten percent (10%) of the contract/project and not to exceed Two Million pesos (Php. 2,000,000.00).
- 2.3 **Implementing Agency.** Shall refer to any Department, Bureau, Office and Agency of the National Government, or to any Government-Owned and/or Controlled Corporation, Government Financing Institution, State University or College, and Local Government Unit undertaking the construction of an infrastructure project.

- 2.4 **Job-Contractor.** Refers to a person or entity who carries out, under his own responsibility, supervision and control, the performance or completion of a specific job, service or work which has been farmed out by another for the latter’s benefit.
- 2.5 **Job-order.** Refers to employment of individuals to undertake piece or lump sum works, or intermittent jobs of short duration not exceeding six months on a daily basis.
- 2.6 **Labor-only Contractor.** Refers to a person or entity that engages in the supply of workers/laborers to an employer but does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed perform activities directly related to the principal business of the employer.
- 2.7 **Pakyaw.** A system of hiring a labor group for the performance of a specific work and/or service incidental to the implementation of infrastructure project by administration whereby tools and materials are furnished by the implementing agency. For the specific work/service output, a lump-sum payment is made either through the group leader or divided among the pakyaw workers and disbursed using a payroll system.
- 2.8 **Semi-skilled Work/Job.** Refers to a work/job which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
- 2.9 **Skilled Work/Job.** Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work.
- 2.10 **Unskilled Work/Job.** Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.

3.0 Conditions and Requirements for the use of the Negotiated Procurement under Sec. 54.2 (d) of the IRR-A of RA 9184

- 3.1 The implementation of infrastructure projects through Negotiated Procurement under Section 54.2 (d) of the IRR-A of R.A. 9184 is justified only (a) where time is of the essence to avert an imminent danger to life or property or to restore destroyed or damaged vital water, power and transportation services and (b) where this need arises from a state of natural or man-made calamity or emergency as declared by appropriate authorities.
- 3.2 Unless otherwise approved by the President, Negotiated Procurement under Section 54.2 (d) of the IRR-A of R.A. 9184 shall be limited to infrastructure projects costing not more than Two Million Pesos (Php. 2,000,000.00). The implementation of infrastructure projects attended by the conditions mentioned in Item 3.1 (a) and (b) above, when it costs above Two Million Pesos (Php. 2,000,000.00), shall be procured under Section 54.2 (b) of IRR-A of RA 9184.
- 3.3 The Head of the Government Agency or the Local Chief Executive shall determine or confirm and certify that the two (2) conditions mentioned in Item 3.1 (a) and (b) above exists and that there is insufficient time to complete the procedures for public bidding or that commencing the same proves less convenient or inefficient, and therefore, the use of Negotiated Procurement under Section 54.2 (d) of the IRR-A of R.A. 9184 is justified.
- 3.4 The procuring entity shall negotiate with a contractor selected from its registry of bona fide contractors licensed with the Philippine Contractors Accreditation Board (PCAB) that has satisfactorily completed a contract of the same nature with the agency. However, when the procuring entity does not maintain such registry or has not in the past undertaken any infrastructure project, the procuring entity may negotiate with any bona fide contractor licensed with the PCAB, located within the vicinity where the calamity or emergency occurred that has satisfactorily completed similar infrastructure contract(s) with any government agency or instrumentality otherwise defined as Procuring Entity under RA 9184.
- 3.5 For purposes of transparency, the procuring entity shall post in the Government-Electronic Procurement System (G-EPS) bulletin board and in its website, if any, general information as to the procurement activity conducted, the recipient of the contract and the reasons for award.

4.0 Conditions and Requirements for the use of “By Administration”

- 4.1 To undertake projects by administration, the implementing agency should (a) have a track record of having completed a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand, and (b) own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies.
- 4.2 No contractor shall be used by the procuring entity, directly or indirectly for works undertaken by administration
- 4.3 The head of the implementing agency shall, before commencing any works under this concept, certify as to the compliance of the implementing agency with the conditions abovementioned.
- 4.4 Other documentary requirements for the undertaking shall include: (a) a Detailed Engineering Plan, (b) an Equipment Schedule, (c) a Manpower Schedule; and (d) a copy of the Memorandum of Agreement between the Implementing Agency and the government agency or local government unit on the lease or use of equipment in favor of the former, if applicable.
- 4.5 Procurement of tools and construction equipment shall be undertaken under a Project Procurement Management Plan (PPMP).
- 4.6 Projects undertaken By Administration shall bear the prior approval of the head of the Implementing Agency.
- 4.7 Except as otherwise provided by law, the maximum amount for infrastructure projects that may be implemented by administration shall be five million pesos (P5,000,000.00); provided, however, that, in the case of NGAs, GOCCs, GFIs, and SUCs, the total amount for all projects undertaken by administration shall not exceed twenty-five percent (25%) of their budget for infrastructure projects as reflected in their approved APP; and in the case of LGUs, not to exceed fifty percent (50%) of the fund allotted for infrastructure projects.
- 4.8 In the application of Force Account, in case an Implementing Agency or any other authorized governmental body intends or is ordered by higher authority to cause the completion of unfinished portions of an infrastructure project which was abandoned, interrupted or otherwise discontinued, it shall directly contract out with a qualified contractor of known reputation and expertise in the field of the works to be contracted, for the implementation of the remaining works. For this purpose, unless the President otherwise approves, the remaining portion shall not be more than ten percent (10%) of the entire contract/project and not to exceed Two Million Pesos (P2,000,000.00). Otherwise, the same shall be subject to competitive bidding. The project cost

thereof is to be billed for at actual cost of labor, materials and equipment, insurance, taxes, etc., plus an agreed percentage for overhead and profit

5.0 Labor Component of infrastructure projects undertaken “By Administration”

- 5.0 For projects undertaken by administration, the manual labor component may be undertaken in-house by the implementing agency concerned, by job-order or through the pakyaw contracting system. In-house labor is undertaken if the workers are employees or personnel occupying regular plantilla positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit (COA) and/or Civil Service Commission (CSC) rules.
- 5.1 Pakyaw labor shall be drawn from the vicinity of the project, or Pakyaw labor groups belong to various Barangay Associations contiguous to the project site. Unskilled labor should be drawn from the Barangay where the project is located; semi-skilled labor shall be recruited within the municipality, preferably within the Barangay; skilled labor shall be recruited within the province but preferably within the Barangay/Municipality.
- 5.2 The formation of Pakyaw Groups should actively involve the Barangay leaders and the community. A Project Facilitator (PF) shall be appointed by the implementing agency to assist in the organization of the Pakyaw Groups and in the preparation of the Pakyaw Contracts. The PF shall, for purposes of informing the community of the project and of organizing pakyaw groups, shall convene community meetings, with the assistance of the Barangay Chairperson/s. The PF shall cause the registration of all unemployed or underemployed members of the community who are interested to join Pakyaw groups being formed for the project.
- 5.3 The Pakyaw workers should be formed into groups of workers based on the lump sum works. In case of competitive selection, pakyaw groups which were not selected for a particular lump sum work may choose to compete for other works requiring pakyaw groups.
- 5.4 Where there is competition for the award of Pakyaw works, the pakyaw labor contract shall be awarded through competitive selection with at least three (3) Pakyaw Groups participating. There is deemed to be a competition for the award of pakyaw contracts when the number of laborers who registered during the community meeting is more than what is reasonably needed for the lump sum work required under the project. The competitive selection shall be done on a “per-output” basis. And the winner(s) shall be determined based on what group(s) undertake(s) to deliver the desired output at the lowest rate, either per item of output or per lump sum work, within the required period.

- 5.5 For purposes of Item 5.4 hereof, the number of members per group shall be determined by the Project Facilitator to ensure that at least three Pakyaw Groups are organized for the competitive selection. The determination by the Project Facilitator of the number of members per Pakyaw Group shall be exercised with regard to the objective of providing work to as many laborers as possible.
- 5.6 A Group Leader shall be elected from among the members of the group who shall be the signatory to the Pakyaw Contract and any other documents pertaining to the work on behalf of the Pakyaw Group. He may be replaced at any time by the group through an election for that purpose, after due notice to the Project Facilitator and the Barangay Chairperson. Any such replacement shall not invalidate any previous Pakyaw Contract.
- 5.7 In no case may Pakyaw Groups be regular or licensed contractors or organized by and/or under the management of a regular or licensed contractor. Laborers supplied by job-contractors/labor-only contractors are likewise disqualified to become members of the Pakyaw groups when the job-contracting/labor-only contracting is specifically carried out for the purpose.
- 5.8 The amount of a pakyaw labor contract per project shall not exceed Five Hundred Thousand Pesos (P500,000.00) per pakyaw group.

6.0 Repealing Clause

This set of guidelines repeals GPPB Resolution 08-2004 confirming, adopting and approving the Guidelines for the Implementation of Projects Undertaken “By Administration” or Force Account.

7.0 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.