

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 278

PRESCRIBING GUIDELINES FOR PROJECT LOAN NEGOTIATIONS AND PACKAGING OF GOVERNMENT FOREIGN-ASSISTED INFRASTRUCTURE PROJECTS

WHEREAS, the 1987 Constitution and existing laws such as Commonwealth Act. Nos. 138 & 541, Republic Act (RA) No. 5183, the Official Development Assistance (ODA) Act of 1996, as amended, and Republic Act (RA) No. 9184 (otherwise known as the Government Procurement Act) mandate the government to give preference to qualified Filipinos in the grant of rights, privileges, and concessions covering the national economy and patrimony, including the purchase of materials, supplies, goods, and equipment as well as in the hiring of consultants, contractors, architects, engineers and other professionals necessary for a project's implementation;

WHEREAS, for recent foreign-assisted infrastructure projects bid out by various government agencies, there have been concerns raised by the Philippine Constructors Association (PCA) and the Confederation of Filipino Consulting Organizations (COFILCO) that the Filipino constructors and consultants are experiencing difficulty in participating in the bidding of such projects due to various reasons such as, among others, that the contracts have been packaged in sizes too large or beyond local financial capabilities or that the criteria and requirements for participation have been set above local capabilities and experience, or the criteria are set beyond the requirements of the project;

WHEREAS, there is a need to prescribe guidelines in the areas of preparation and packaging of projects/contracts and loan negotiations for government foreign-assisted infrastructure projects which will provide Filipino constructors and consultants with better market opportunities and allow them to upgrade their capabilities and compete internationally;

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

SECTION 1. General Policy on Consultancy Services for Government Infrastructure Projects. As a general rule, the government should, as much as possible, fund consultancy services for government infrastructure projects with local funds and using local resources and expertise. Consultancy services shall be proposed for foreign assistance only where foreign funding is indispensable or local funds are insufficient. For this purpose, the concerned government units shall provide funds in their respective investment programs for the following consultancy services:

- a. Pre-investment components which shall include feasibility studies and related surveys and special studies;
- b. Detailed engineering design and related activities (where the project is determined to be feasible); or
- c. Project Management/Supervision

Where Filipino capability is determined by appropriate authorities to be insufficient, Filipino consultants may hire or associate themselves with foreign consultants, provided that the Filipino shall be the lead consultant.

Where foreign funding is indispensable, foreign consultants for the project must enter into joint venture with Filipino consultants.

SEC. 2. Packaging of Government Infrastructure Projects.

The following basic principles shall govern the work packaging of government infrastructure projects, irrespective of the funding source:

1. Large government infrastructure projects, when feasible, shall be packaged into separable work components without sacrificing the technical integrity of the structure to be built and taking into account Filipino capabilities. Complex and/or multi-disciplinary infrastructure projects covering works of a different nature requiring varied competencies shall be packaged into separate work components to be defined in the Implementing Rules and Regulations (IRR) of this Order.
2. The packaging of such projects shall take into account the technical and financial capabilities and experience of Filipino in the domestic and international market, as well as the most logical and practical scope of work to complete a project or any part thereof.
3. In the criteria for determining eligible or pre-qualified bidders, the successful completion of a single project whose value is at least fifty percent of the value of the contract to be bid shall be acceptable as work experience requirement.
4. Clustering of small and medium projects may be adopted, provided that the resulting cluster or package is within the capabilities of Filipino contractors.
5. However, packaging of projects that is tantamount to or will result in contract splitting as defined under Section 11 of Executive Order No. 109-A, for the purpose of evading or circumventing the requirements of law and/or existing rules and regulations, shall not be allowed.

SEC. 3. Pre-Loan Negotiations. Prior to loan negotiations, the negotiating panel shall convene a technical working group to include at least one (1) representative from the private sector to provide inputs and ensure transparency. The DOF shall invite the representative(s) upon recommendation by the Construction Industry Authority of the Philippines (CIAP), in case of infrastructure projects, and upon recommendation by the private sector concerned in case of goods and consulting services.

SEC. 4. Projects Preparation and Loan Negotiation Parameters. In the preparation of projects or negotiation of foreign loans for these projects, the government negotiating panels shall strictly observe the provisions of this EO including the following parameters:

1. Where special tax privileges are granted to a particular class/nationality by virtue of the government's international commitments, such tax privileges shall be included in the bid offers/financial proposals for purposes of evaluation and the basis of contract award.
2. To ensure the sustained promotion of Filipino talents in all fields, effect technology transfer, and adoption of measures that will help them become competitive, the loan agreement shall, whenever economically viable, provide for joint venture associations between Filipino and foreign firms.
3. The government negotiating panel shall ensure that the loan agreement, including exchanges of notes and other documents made integral parts thereof, do not contain provision which discriminate against Filipinos and limit their participation in the project to be funded under the loan agreement.

SEC. 5. Implementing Rules and Regulations (IRR). The NEDA Infrastructure Committee (INFRACOM) shall promulgate the IRR for this Order within sixty (60) days from date hereof.

SEC. 6. Repealing Clause. All executive issuances, orders, rules and regulations, department orders, circulars of parts thereof inconsistent with this Order are hereby repealed, amended and/or modified accordingly.

SEC. 7. Separability Clause. If any provision of this Order is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 8. Effectivity. This Order shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.

DONE, in the City of Manila, this 2nd day of February in the year of our Lord Two Thousand and Four.

(Sgd.)**GLORIA MACAPAGAL – ARROYO**

By the President:

(Sgd.)**ALBERTO G. ROMULO**

Executive Secretary