

NPM No. 24-2007

30 July 2007

MS. JOSEFINA A. CONTRERAS
Chief
Animal Products Development Center
Bureau of Animal Industry
DEPARTMENT OF AGRICULTURE
A. Fernando Street, Valenzuela City

**Re: Negotiated Procurement under Section 53 (d) of the IRR-A
of Republic Act No. 9184**

Dear Ms. Contreras:

We respond to your letter dated 26 October 2006 seeking clarification on whether you can proceed with negotiated procurement under Section 53 (d) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9186 (R. A. 9186) for the construction of waste treatment facility.

Based on your letter, the facts appear as follows: Said construction is composed of five (5) components. The construction of the four (4) components was done under the framework of the Asia Pacific Meat Project, a foreign assisted project funded by the Food and Agriculture Organization, the German Technical Cooperation, and the Common Fund for Commodities, in the amount of Php. 398,322.30. The construction of the remaining one (1) component is the Philippine Government's commitment estimated at Php. 45,000.00. This component would be contiguous to the construction of the four (4) components. Your office intends to procure the construction for said remaining component through negotiated procurement in order to avoid delay.

Under Section 53 (d) of the IRR-A, the procuring entity may directly negotiate a contract with a technically, legally and financially capable contractor where the subject contract is adjacent or contiguous to an on-going infrastructure project subject to the following conditions:

- (i) the original contract is the result of competitive bidding;
- (ii) the subject contract to be negotiated has similar or related scopes of work;

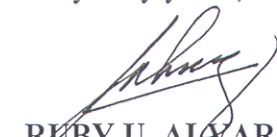
- (iii) it is within the contracting capacity of the contractor;
- (iv) the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- (v) the amount involved does not exceed the amount of the on-going project;
- (vi) the contractor has no negative slippage; and
- (vii) the negotiations for the procurement are commenced before the expiry of the original contract.

The terms "adjacent" and "contiguous" are synonymous and shall mean that the projects concerned shall be in actual physical contact with each other (Section 54 [f], IRR-A).

Please be advised that under Section 12 of R. A. 9184, it is the Bids and Awards Committee (BAC) which shall recommend to the head of the procuring entity the use of any of the alternative methods of procurement. Thus, if the BAC of your office determines that all the conditions for negotiated procurement under Section 53 (d) of the IRR-A have been met, said BAC may make the proper recommendation to the head of the procuring entity for the use of negotiated procurement. The head of the procuring entity shall approve or disapprove such recommendation of the BAC (Section 48.1, IRR-A, R. A. 9184).

We hope that we have sufficiently addressed your query. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III