



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
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NPM No. 80-2007

7 December 2007

MR. FELIX S. RACADIO

President and CEO

Administrative Office

PORO POINT MANAGEMENT CORPORATION

Pennsylvania Avenue, Poro Point

San Fernando City 2500

La Union

Re : Section 53 (d) of Republic Act No. 9184

Dear Mr. Racadio:

Further to our letter-opinion dated 04 April 2006 and in response to your letter dated 28 April 2006, you wish to know whether Poro Point Management Corporation (PPMC) can enter into a negotiated contract with the contractor for the revision of an on-going project's scope of work under Section 53 (d) of Republic Act No 9184 (R. A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

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" shall be considered 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 the Government Procurement Policy Board (GPPB) is an administrative body imbued with quasi-legislative or rule-making power¹ to determine policy directions in the area of public procurement. Under Section 12 of R. A. 9184, in proper cases, the Bids and Awards Committee (BAC) shall recommend to the head of the procuring entity the use of 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 are present, 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)

We trust that this clarifies matters. Should you have further questions, please do not hesitate to let us know.

Very truly yours,



RUBEN U. ALVAREZ
Executive Director III

¹ Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137)