



REPUBLIC OF THE PHILIPPINES  
**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS**  
OFFICE OF THE SECRETARY  
MANILA

097.13 PWH  
01-19-2007

JAN 18 2007

DEPARTMENT ORDER ) SUBJECT: GUIDELINES FOR THE  
NO. 01 ) IMPLEMENTATION OF INFRASTRUCTURE  
Series of 2007 ) PROJECTS THRU NEGOTIATED  
01-19-07 ) PROCUREMENT

In order to consolidate pertinent provisions of various implementing rules and regulations related to negotiated procurement, this Department Order is hereby issued to reiterate the terms and conditions, and to provide the corresponding authorization relative thereto.

Negotiated procurement is one of the Alternative Methods of Procurement allowed pursuant to RULE XVI, Section 53 of the Implementing Rules and Regulations Part A of Republic Act 9184 (IRR-A of RA 9184). **In accordance with the said Section 53, the procuring entity directly negotiates a contract with a technically, legally and financially capable contractor only in the following cases:**

- a) Where there has been failure of public bidding for the second time as provided in Section 35 of the Act and this IRR-A;
- b) 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. The procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;
- c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property,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;

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- d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project: *Provided, however, That;*
- (i) the original contract is the result of a 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 ongoing project; and
  - (vi) the contractor has no negative slippage: *Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service;*
- e) Where the amount involved is fifty thousand pesos (P50,000.00) and below (Additional provision as Section 53(h) of this IRR-A, per GPPB Resolution 004-2006, dated 20 January 2006); *Provided, however, That the procurement does not result in splitting of contracts, as provided under Section 54.1 of this IRR-A: Provided, further, That the procurement does not fall under Shopping in Section 52 of this IRR-A.*

**The terms and conditions for the use of alternative methods of procurement are spelled out in Section 54 of the IRR-A of RA 9184, as amended, which provides that;**

Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

**For item (a) above,** the procuring entity shall draw up a list of at least three (3) contractors in good standing which will be invited to submit bids and negotiate with the bidder who submitted the lowest calculated bid or highest rated bid, whichever is applicable. If the offer of the bidder who

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submitted the lowest calculated bid or highest rated bid, whichever is applicable, is not responsive to the original specifications and ABC, negotiation shall be made in ascending order starting from the lowest offer. The bidder whose bid is found to be responsive to the original specifications and ABC shall be considered for award.

Bona fide contractors licensed with the CIAP whose eligibility documents are on file with the procuring entity concerned or the Department of Public Works and Highways (DPWH) Contractor's Registry, as the case may be, and who have been classified under the type of contract/project where the subject contract falls are eligible to be invited for negotiation. Other contractors not previously deemed eligible may also apply for eligibility.

Eligible contractor(s) for the project under consideration shall be furnished copies of the instructions to offerers, plans, specifications, proposal book form, and other tender documents for their use in submitting their quotation and other information called for in the format. The contractors shall submit, simultaneously with their quotation, the bid security as stipulated above. Negotiation may be made in ascending order starting from the lowest complying offerer.

**For item (b) above**, the negotiation shall be made, as clarified in GPPB Circular No. 03-2006 dated December 6, 2006, with the procuring entity simply negotiating with a previous contractor of good standing of the procuring entity concerned, or a contractor of good standing situated within the vicinity where the calamity or emergency occurred.

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**. Provided further that amount of the negotiated contract shall be limited to what is necessary to undertake initial urgent/emergency work for continued use of the facility and to prevent further damage to or loss of life or property, or to restore vital public service, infrastructure facilities and other public utilities.



**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.



**For item (c) above,** the contract may be negotiated starting with the second lowest calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the procuring entities concerned, within their respective limits of approving authority.

**For item (d) above,** 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.

**For item (e) above,** the procuring entity shall draw up a list of at least three (3) contractors of known qualifications which will be invited to submit proposals.

**In all cases above, in order to facilitate the implementation of projects to be procured using negotiated procurement, the concerned Regional Director is authorized to approve negotiated contracts up to 5 million pesos. Projects to be implemented with cost more than 5 million shall require prior clearance and/or approval by the DPWH Secretary.**

**For all cases, the Invitation to Apply for Eligibility and to Bid, when required, and the award of contract shall be posted at the G-EPS website, website of the DPWH and in conspicuous place within the premises of the procuring entity.**



For guidance and implementation of all concerned.

  
**HERMOGENES ERBUANE, JR.**  
Acting Secretary



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