

2007

GPPB Resolution 12-2007 (issued 29 June 2007)

Allowed Negotiated Procurement in cases:

“Section 53 (j): When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.”

Premised on RA9358 (Supplemental Budget for FY2006) & RA9401, GAA for FY2007, which provided Php250M respectively, “for the construction of school buildings to be made available to NGOs.”

RA9184 Government Procurement Reform Act (2003):

Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

- a. In case of **two (2) failed bidding** as provided in Section 35 hereof;
- 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;

RA9184 Government Procurement Reform Act (2003):

Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

c. **Take-over of contracts**, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property,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;

d. Where the subject contract is **adjacent or contiguous to an on-going infrastructure project**, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding; xxx

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Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

- e) **Procurement** of infrastructure, consulting services and goods **from another agency of the Government**, such as the PS-DBM, xxx

- f) In the case of individual consultants hired to do work that is (i) **highly technical or proprietary**; or (ii) **primarily confidential** or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, xxx

RA9184 IRR-A

Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

g) Upon prior approval by the President of the Philippines, and when the procurement **for use by the AFP involves major defense equipment** and/or defense-related consultancy services, when the **expertise or capability required is not available locally**, and the Secretary of National Defense has determined that the interests of the country shall be protected xxx Provided, however, ... the procurement contract shall be covered by a **foreign government guarantee** of the source country covering one hundred percent (100%) of the contract price; xxx

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Section 53. Negotiated Procurement. - Negotiated Procurement shall be allowed only in the following instances:

- h) Where the **amount involved is Fifty Thousand Pesos (P50,000.00) and below**; Provided, however, that the procurement does **not result in splitting of contracts**,xxx
- i) **Lease of privately owned real estate for official use**, subject to guidelines to be issued by the GPPB.

1. POLICY STATEMENT

Section 23, Article II of the Philippine Constitution prescribes that the State shall encourage the participation of Non-Governmental Organizations (NGOs), community-based, or sectoral organizations in the promotion of the welfare of the nation.

As a general rule, **all procurement shall be done through competitive public bidding. However**, when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs, **it is the intent of Congress to give due preference to NGOs.**

4. GENERAL GUIDELINES

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the **procuring entity may select an NGO through competitive public bidding or negotiated procurement** under Section 53 (j) of the IRR-A.

5. PUBLIC BIDDING LIMITED TO NGOs

5.3 The determination of an **NGO's eligibility** shall be based on the submission of the documents enumerated under Sections 23.6 and 24.7.1 of IRR-A. However:

5.3.3 To establish the **financial stability** of the participating NGO, audited financial statements for the past three (3) years must be submitted under Section 23.6 (1) (i) of the IRR-A;

5.3.4 **Participating NGOs need not submit** the financial document prescribed under Section 23.6 (1) (j) of the IRR-A.

GPPB Resolution 12-2007 Annex A
Guidelines on NGO Participation in Public Procurement
5.3.4 viz Section 23.6 (1)(j) of IRR-A

5.3.4 ***Participating NGOs need not submit*** the financial document prescribed under Section 23.6 (1) (j) of the IRR-A.

IRR-A Section 23.6. Eligibility Check for the Procurement of Goods and Infrastructure Projects. The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:

1. Class “A” Documents -

Financial Documents

j) *The prospective bidder’s **audited financial statements, stamped “received” by the BIR or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder’s total and current assets and liabilities;***

Other Special Provisions relative to
NGO Participation in Public Procurement
in Revised IRR of RA9184 (effective 2 Sept 2009)