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MC # 19 s. 2009

MEMORANDUM CIRCULAR

TO : THE ACTING SENIOR DEPUTY ADMINISTRATOR, ACTING
DEPUTY ADMINISTRATORS, DEPARTMENT MANAGERS,
REGIONAL IRRIGATION MANAGERS, OPERATIONS
MANAGERS, PROJECT MANAGERS, PROVINCIAL IRRIGATION
OFFICERS, IRRIGATION SUPERINTENDENTS AND ALL OTHERS
CONCERNED

SUBJECT : GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE
PROJECTS BY ADMINISTRATION, PRESCRIBED UNDER GPPB
RESOLUTION NO. 018-2006 DATED DECEMBER 6, 2006

Pursuant to Section 10, Article IV of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations – Part A (IRR-A), all Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act – Alternative Methods of Procurement. Relative to the aforesaid requirement of RA 9184, the Government Procurement Policy Board (GPPB) has formulated the Guidelines for the Implementation of Infrastructure Projects “by Administration”.

Quoted hereunder in full is the Guidelines promulgated by the GPPB as an Annex to GPPB Resolution No. 18-2006, dated January 6, 2006, to wit:

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Annex “A”

GUIDELINES FOR THE IMPLEMENTATION OF INFRASTRUCTURE PROJECTS BY ADMINISTRATION

1.0 Purpose and Coverage

These guidelines shall provide rules for the implementation of projects "by administration" by all Departments, Bureaus, Offices and Agencies of the National Government (NGA), Government-Owned and/or Controlled Corporations (GOCCs), Government Financing Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units (LGUs).

Projects undertaken "by administration" by the Armed Forces of the Philippines Corps of Engineers (AFPCOE) shall be governed by the guidelines issued by the GPPB through Resolution 09-2005 dated 28 April 2005.

2.0 Definition of Terms

For purposes of these guidelines, the following terms shall be defined as follows:

- 2.1 **"By Administration"** refers to the procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency through its own personnel.
- 2.2 **Implementing Agency** refers to any government unit undertaking the construction of an infrastructure project.
- 2.3 **Job-Contractor** refers to a person or entity who carries out, under his own responsibility, supervision and control, the performance or completion of a specific job, service or work which has been farmed out by another for the latter's benefit.
- 2.4 **Job-order** refers to employment of individuals to undertake piece or lump sum works, or intermittent jobs of short duration not exceeding six months on a daily basis.
- 2.5 **Labor-only Contractor** refers to a person or entity that engages in the supply of workers/laborers to an employer but does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed perform activities directly related to the principal business of the employer.
- 2.6 **Pakyaw** refers to a system of hiring a labor group for the performance of a specific work and/or service incidental to the implementation of an infrastructure project by administration whereby tools and materials are furnished by the implementing agency. For the specific work/service output, a lump-sum payment is made either through the group leader or divided among the pakyaw workers and disbursed using a payroll system.
- 2.7 **Semi-skilled Work/Job** refers to a work/job which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex

than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

- 2.8 **Skilled Work/Job** refers to work that requires qualifications in which a person uses judgment to determine the machine and manual operations in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work.
- 2.9 **Unskilled Work/Job** refers to work which needs little or no judgment that can be learned on the job in a short period of time. The job may or may not require considerable strength.

3.0 Conditions and Requirements for the use of "By Administration"

- 3.1 Projects undertaken by Administration shall be included in the approved Annual Procurement Plan (APP) of the procuring entity concerned. If the original mode of procurement recommended in the APP was Public Bidding but cannot be ultimately pursued, or the project to be undertaken by administration has not been previously included, the BAC, through a resolution shall justify and recommend the change in the mode of procurement or the updating of the APP to be approved by the Head of the Procuring Entity.
- 3.2 To undertake projects by administration, the implementing agency must:
- a. have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand, and
 - b. own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies. The criteria for evaluating the track record and capability of implementing agencies shall be in accordance with the guidelines to be issued by the Department of Public Works and Highways in consultation with the leagues enumerated under the Local Government Code.
- 3.3 Any project costing Five Million (P 5,000,000) or less may be undertaken by administration or force account by the implementing agency concerned. A project costing over Five Million (P 5,000,000) may be undertaken by the agency concerned only in the following cases:
- a. emergency arising from natural calamities or where immediate action is necessary to prevent imminent loss of life or property;
 - b. to comply with government commitments, as certified by the concerned government authority;

- c. failure to award a contract after competitive bidding for a valid cause;
- d. termination or rescission of contract;
- e. areas with critical peace and order problems as certified by the Local Peace and Order Council;

PROVIDED, that prior authority shall be obtained from the Secretary of Public Works and Highways, if the project cost is Five Million (P5,000,000) up to Twenty Million (P20,000,000), or from the President of the Philippines, upon the favorable recommendation of the Secretary of Public Works and Highways, if the project cost is more than Twenty Million (P 20,000,000).

- 3.4 No contractor shall be used by the procuring entity, directly or indirectly for works undertaken by administration.
- 3.5 Procurement of tools and construction equipment shall be subject to the rules on public bidding.
- 3.6 For projects funded by the National Government and implemented by a Local Government Unit, the latter shall be required to post the necessary warranty security in accordance with Section 62 of RA 9184 and its IRR-A.
- 3.7 The manual labor component of projects undertaken by administration may be undertaken in-house by the implementing agency concerned, by job-order or through the pakyaw contracting system. In-house labor is undertaken if the workers are employees or personnel occupying regular plantilla positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit (COA) and/or Civil Service Commission (CSC) rules.

4.0 Pakyaw Contracting System

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- 4.1 Pakyaw labor shall be drawn from the vicinity of the project, or Pakyaw labor groups belong to various Barangay Associations contiguous to the project site. Unskilled labor should be drawn from the Barangay where the project is located; semi-skilled labor shall be recruited within the municipality, preferably within the Barangay; skilled labor shall be recruited within the province but preferably within the Barangay/Municipality.
 - 4.2 The formation of Pakyaw Groups should actively involve the Barangay leaders and the community. A Project Facilitator (PF) shall be appointed by the implementing agency to assist in the organization of the Pakyaw Groups and in the preparation of the Pakyaw Contracts. The PF shall, for purposes of informing the community of the project and of organizing pakyaw groups, shall convene community meetings, with the assistance of the Barangay Chairperson/s. The PF shall cause the registration of all unemployed or underemployed members of the community who are interested to join Pakyaw groups being formed for the project.

- 4.3 The Pakyaw workers should be formed into groups of workers based on the lump sum works. In case of competitive selection, pakyaw groups which were not selected for a particular lump sum work may choose to compete for other works requiring pakyaw groups.
- 4.4 Where there is competition for the award of Pakyaw works, the pakyaw labor contract shall be awarded through competitive selection with at least three (3) Pakyaw Groups participating. There is deemed to be a competition for the award of pakyaw contracts when the number of laborers who registered during the community meeting is more than what is reasonably needed for the lump sum work required under the project. The competitive selection shall be done on a "per-output" basis. And the winner(s) shall be determined based on what group(s) undertake(s) to deliver the desired output at the lowest rate, either per item of output or per lump sum work, within the required period.
- 4.5 For purposes of Item 4.4 hereof, the number of members per group shall be determined by the Project Facilitator to ensure that at least three Pakyaw Groups are organized for the competitive selection. The determination by the Project Facilitator of the number of members per Pakyaw Group shall be exercised with regard to the objective of providing work to as many laborers as possible.
- 4.6 A Group Leader shall be elected from among the members of the group who shall be the signatory to the Pakyaw Contract and any other documents pertaining to the work on behalf of the Pakyaw Group. He may be replaced at any time by the group through an election for that purpose, after due notice to the Project Facilitator and the Barangay Chairperson. Any such replacement shall not invalidate any previous Pakyaw Contract.
- 4.7 In no case may Pakyaw Groups be regular or licensed contractors or organized by and/or under the management of a regular or licensed contractor. Laborers supplied by job-contractors/labor-only contractors are likewise disqualified to become members of the Pakyaw groups when the job-contracting/labor-only contracting is specifically carried out for the purpose.
- 4.8 The amount of a pakyaw labor contract per project shall not exceed Five Hundred Thousand Pesos (P500,000.00) per pakyaw group.

6.0 Repealing Clause

This set of guidelines repeals GPPB Resolution 13-2005 approving and adopting the Guidelines for the Implementation of Infrastructure Projects through Negotiated Procurement under Sec. 54.2 (d) of IRR-A of RA 9184 and by Administration.

7.0 Effectivity

These Guidelines or any amendments hereto shall take effect fifteen (15) days after publication in the Official Gazette or in a newspaper of general nationwide circulation

and upon filing with the University of the Philippines Law Center of three (3) certified copies of these guidelines.”

In addition to the preparation of the Approved Procurement Plan required under Section 3 of the above-quoted Guidelines, a Program of Work shall also be prepared whereby: a) the derivation of unit costs and estimates shall be in accordance with MC No. 18, s. 2009; b) under Direct Cost, every package, job order, and/or pakyaw contract shall be indicated as such complete with quantities and costs, in addition to the works under Public Bidding (Contract), Right-of-Way, etc.; and, c) under Indirect Costs, the General Engineering Supervision and Administration (GESA) shall not be more than 3.5% of Direct Cost and the Management Fee shall be 5% of the total project/program cost.

The generation of income for the Agency thru equipment rental of NIA's equipment resources used in works "by Administration" shall continue to be pursued.

All NIA Memorandum Circulars and Issuances which are contrary to or inconsistent with the provisions of the above GPPB Guidelines or this MC are hereby repealed, modified or amended accordingly.

For guidance and compliance.


CARLOS S. SALAZAR
Administrator

April 22, 2009.