

[EXECUTIVE ORDER NO. 109-A, September 18, 2003]

**AMENDING EXECUTIVE ORDER NO. 109 DATED MAY 27, 2002
PRESCRIBING THE RULES AND PROCEDURES ON THE REVIEW
AND APPROVAL OF ALL GOVERNMENT CONTRACTS TO CONFORM
WITH REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE
GOVERNMENT PROCUREMENT REFORM ACT**

WHEREAS, in line with the government's program of good governance, Executive Order No. 109 dated May 27, 2002 entitled "Streamlining The Rules and Procedures On the Review and Approval Of All Contracts Of Departments, Bureaus, Offices, and Agencies Of The Government, Including Government-Owned or Controlled Corporations And Their Subsidiaries" was issued for the expeditious implementation of development projects and the speedy delivery of basic services while promoting transparency, competitiveness, and accountability in government transactions;

WHEREAS, Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, which was enacted into law on January 10, 2003, likewise declared it the policy of the State to promote the ideals of good governance, with a view to transparency, competitiveness, streamlining, accountability and public monitoring in the procurement process of Government Contracts;

WHEREAS, Republic Act No. 9184 consolidated the procurement processes of Government Contracts, including the procurement of infrastructure projects, goods and consulting services, and lease of goods and real estate, among others;

WHEREAS, it has become necessary to amend the provisions of Executive Order No. 109 dated May 27, 2002 to make it conform with the provisions of Republic Act No. 9184;

WHEREAS, the Government Procurement Policy Board (GPPB) and the National Economic and Development Authority (NEDA) recommend the issuance of this Executive Order;

NOW, THEREFORE, I, Gloria Macapagal Arroyo, President of the Philippines, by virtue of the powers vested in me by law do hereby order:

Section 1. Policy Requiring Public Bidding - It is the policy of this Administration that all Government Contracts of Government Agencies, including procurement contracts, shall be awarded through open and competitive public bidding save in exceptional cases provided by law and applicable rules and regulations, as described in Section 3 of this Executive Order.

For this purpose, a Government Agency shall refer to the various units of the Government, including a department, bureau, office, instrumentality, government-owned and/or controlled corporation or its subsidiary, or state college or university

(Cf. Section 2(4) of Executive Order No. 292 dated July 25, 1987, otherwise known as the Administrative Code of 1987)

Section 2. Approval of Government Contracts Awarded Through Public Bidding - Except for Government Contracts required by law to be acted upon and/approved by the President, the Heads of the procuring entities shall have full authority to give final approval and/or enter into all Government Contracts of their respective Government Agencies, awarded through public bidding, regardless of the amount involved.

The Heads of the procuring entities may delegate in writing this full authority to give final approval and/or enter into Government Contracts awarded through public bidding as circumstances may warrant (i.e., decentralization of procurement in a Government Agency), subject to such limitations imposed by the Head of the procuring entity concerned (Cf. Section 5(j), Republic Act No. 9184).

As defined under Section 5(j) of Republic Act No. 9184, a Head of the procuring entity refers to (i) the head of the agency or his duly authorized official, for national government agencies, or (ii) the governing board or its duly authorized official, for government-owned and/or-controlled corporations.

Section 3. Exceptions to Public Bidding - Sections 48 to 53 of Republic Act No. 9184 and its Implementing Rules and Regulations provide for exceptional cases where the procurement of infrastructure projects, goods and consulting services may be undertaken through alternative methods of procurement, other than through public bidding.

Section 4. Approval of Government Contracts Entered Into Through Alternative Methods of Procurement, Other Than Through Public Bidding -

- a. **For Government Contracts Involving An Amount Of At Least Three Hundred Million Pesos (P300 Million).** Where the Head of the procuring entity has made a determination that a Government Contract, including Government Contracts required by law to be acted upon and/or approved by the President, involving an amount of at least Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 3 hereof, the Head of the procuring entity shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the following requirements:
 - i. An opinion from the Secretary of Justice that said Government Contract falls within the exceptions from public bidding; and
 - ii. Approval from the Director-General of NEDA to proceed with a specific alternative method of procurement under the exceptional cases provided by law and applicable rules and regulations. This authority to approve shall be lodged with the Director-General of NEDA until such time that the GPPB created under RA No. 9184 informs the NEDA in writing of its decision to exercise such authority.

After obtaining the foregoing requirements, except for Government

Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall have full authority to give final approval and/or enter into Government Contracts of their respective Government Agencies, entered into through alternative methods of procurement allowed by law, other than through public bidding where the Government Contract involves an amount of at least Three Hundred Million Pesos (P300 Million).

- b. **For Government Contracts Involving An Amount Below Three Hundred Million Pesos (P300 Million).** Except for Government Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall likewise have full authority to give final approval and/or enter into Government Contracts of their respective Government Agencies, entered into through alternative methods of procurement allowed by law, other than through public bidding, where the Government Contract involves an amount below Three Hundred Million Pesos (P300 Million).

The Heads of the procuring entities may delegate in writing this full authority to give final approval and/or enter into Government Contracts involving an amount of below Three Hundred Million Pesos (P300 Million) entered into through alternative methods of procurement allowed by law, other than through public bidding, as circumstances may warrant (i.e., decentralization of procurement in a Government Agency), subject to such limitations imposed by the Head of the procuring entity concerned (Cf. Section 5(j), Republic Act No. 9184).

Section 5. Authority to Bind the Government - All Government Contracts shall require the approval and signature of the respective Heads of the procuring entities or their respective duly authorized officials, as the case may be, as required by law, applicable rules and regulations, and by this Executive Order, before said Government Contracts shall be considered approved in accordance with law and binding on the government, except as may be otherwise provided in Republic Act No. 9184. For Government Contracts required by law to be acted upon and/or approved by the President, Section 6 of this Executive Order governs the process by which such Government Contracts shall be considered entered into with authority and binding on the government.

The Heads of the procuring entities or their respective duly authorized officials, as the case may be, shall be responsible and accountable for ensuring that all Government Contracts they approve and/or enter into are in accordance with existing laws, rules and regulations and are consistent with the spending and development priorities of government.

All Government Contracts entered into in violations of the provisions of law, rules and regulations, and this Executive Order shall be considered contracts entered into without authority and are thus invalid and not binding on the government.

Section 6. Government Contracts Requiring Presidential Action and/or Approval - a. All Government Contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall not be signed until after the NEDA Board, which is chaired by the President, has favorably acted upon and/or approved the same.