

EXECUTIVE ORDER NO. 109

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

WHEREAS, in line with the government's program of good governance, there is a need to streamline procedures for the review and approval of government contracts for the expeditious implementation of development projects and the speedy delivery of basic services while promoting transparency, impartiality, and accountability in government transactions;

WHEREAS, to achieve the foregoing, the National Economic and Development Authority (NEDA) has recommended 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. Public Bidding. It is the policy of this Administration that all Government 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 2 of this Executive Order.

Except for contracts required by law to be acted upon and/or approved by the President, Department Secretaries shall have full authority to give final approval and/or enter into all Government Contracts of their respective departments and of bureaus, offices, and agencies, government-owned or controlled corporations and their subsidiaries attached or under the control and/or supervision of the Department Secretary, awarded through public bidding, regardless of the amount involved.

Every Department Secretary and Head of a bureau, office, and agency of the government, as well as the Head and governing board of a government-owned or controlled corporation and its subsidiary, shall be responsible and accountable for ensuring that all Government Contracts



entered into are in accordance with all existing laws, rules and regulations and are consistent with the spending and development priorities of government.

Section 2. Exceptions to Public Bidding. The law and applicable rules and regulations provide for exceptional cases where a Government Contract may be excepted from the requirement of public bidding, as follows:

- a. For infrastructure projects, including supply contracts, civil works, and other related contracts, as provided under Section 62, Chapter 13, Book IV, Revised Administrative Code of 1987, Section 4, Presidential Decree No. 1594, and Executive Order No. 40 dated October 8, 2001 [EO 40] and its Implementing Rules and Regulations;
- b. For procurement of goods, supplies, materials and related services as provided under EO 40 and its Implementing Rules and Regulations; and
- c. For consulting services as provided under EO 40 and its Implementing Rules and Regulations.

Section 3. Requirements for Exception from Public Bidding.

Where the Department Secretary has made a determination that a Government Contract involving an amount of at least Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 2 hereof, the Department Secretary shall, before proceeding with the alternative modes of procurement as provided by law and applicable rules and regulations, obtain the following:

- a. An opinion from the Secretary of Justice that said Government Contract falls within the exceptions from public bidding; and
- b. Approval from the Director-General of NEDA to proceed with a specific alternative mode of procurement under the exceptional cases provided by law and applicable rules and regulations.

After compliance with the foregoing requirements, except for contracts required by law to be acted upon and/or approved by the President, Department Secretaries shall have full authority to give final approval and/or enter into such Government Contracts excepted from the requirement of public bidding, regardless of the amount involved.



Where a Government Contract, not required by law to be acted upon and/or approved by the President, involves an amount below Three Hundred Million Pesos (P300 Million) and the concerned Department Secretary has made a determination that the Government Contract falls under any of the exceptions from public bidding described in Section 2 hereof, the Department Secretary has full authority to give final approval and/or enter into the Government Contract without need of obtaining the foregoing requirements.

The Department Secretary may delegate in writing to appropriate officials, subject to appropriate ceilings, this authority to determine whether a Government Contract involving an amount below Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 2 hereof.

Section 4. Governing Law for Government Contracts.

- a. BOT Contracts. Contracts undertaken through Build Operate and Transfer (BOT) schemes and other variations shall be governed by the provisions of Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations.
- b. Contracts for infrastructure projects, including supply contracts, civil works, and other related contracts. Contracts for infrastructure projects, including supply contracts, civil works, and other related contracts shall be governed by the Revised Administrative Code of 1987, Presidential Decree No. 1594, and EO 40 and its Implementing Rules and Regulations.
- c. Contracts for goods, supplies, materials and related services. Contracts for goods, supplies, materials and related services shall be governed by EO 40 and its Implementing Rules and Regulations.
- d. Contracts for consulting services. Contracts for consulting services shall be governed by EO 40 and its Implementing Rules and Regulations.
- e. Lease Contracts. Lease contracts for goods, supplies and materials shall be governed by EO 40 and its Implementing Rules and Regulations.

Lease contracts for real estate and other properties shall be governed by Executive Order No. 301 dated July 26, 1987



MA Outgoing # 11808

and guidelines issued by the Department of Public Works and Highways.

- f. ODA-funded Contracts. Government Contracts financed wholly or partly with Official Development Assistance (ODA) funds shall be governed by Republic Act No. 4860, as amended and Republic Act No. 8182, as amended by Republic Act No. 8555.

NEDA shall issue guidelines for Government Contracts financed with ODA funds with the objective of promoting transparency, impartiality, and accountability in government transactions.

Section 5. Joint Venture Agreements. NEDA shall, in consultation with the Department of Justice, issue guidelines regarding joint venture agreements with private entities with the objective of promoting transparency, impartiality, and accountability in government transactions and, where applicable, complying with the requirements of an open and competitive public bidding.

Section 6. Transactions of Government Financial Institutions. Transactions of government financial institutions in the ordinary course of business shall not be covered by the provisions of this Executive Order. Such transactions shall instead be subject to applicable provisions of law and to guidelines, rules and regulations issued by the Department of Finance.

Section 7. Requirements for All Government Contracts. All Government Contracts shall be:

- a. Processed completely by the concerned department, bureau, office and agency of the government, including a government-owned or controlled corporation and its subsidiary;
- b. Signed and/or approved by the Head of the bureau, office, and agency of the government, the Head and/or governing board of the government-owned or controlled corporation and its subsidiary and the Department Secretary; and
- c. Accompanied by the certifications issued by (i) the concerned Department Secretary; (ii) the Head of the bureau, office or agency; and (iii) the Head and governing board of the government-owned or controlled corporation or its



Outgoing # 11809



subsidiary, that the contract is in accordance with all existing laws, rules and regulations.

Section 8. Authority to Bind the Government. All Government Contracts shall require the approval of the Department Secretary after the Government Contract has been signed and/or approved by the Head of a bureau, office or agency or by the Head and/or governing board of the government-owned or controlled corporation or its subsidiary, before the Government Contract shall be considered approved in accordance with law and binding on the government.

Except for contracts required by law to be acted upon and/or approved by the President, the Department Secretary possesses the full authority to approve and/or enter into a Government Contract binding on the government. However, a Department Secretary may delegate in writing to appropriate officials, subject to appropriate ceilings, this authority to approve a Government Contract involving an amount below Three Hundred Million Pesos (P300 Million), whether publicly bidden or excepted from public bidding, as he sees fit under the circumstances.

For Government Contracts signed by the Head of a bureau, office, and agency of the government, and by the Head and/or governing board of a government-owned or controlled corporation and its subsidiary attached to or under the Office of the President, the Executive Secretary shall approve the Government Contract in accordance herewith.

All Government Contracts entered into in violation of the provisions of law, existing 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 9. 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 of the Philippines, has favorably acted upon or approved the same.

b. All Government Contracts required by law to be acted upon and/or approved by the President, and any subsequent amendments or supplements thereto, shall be submitted to NEDA, through its Director-General, within seven (7) days from the approval by the Department Secretary concerned, for NEDA's review and evaluation.

Government Contracts submitted hereunder shall be accompanied by a complete execution copy of the contract, related agreements,



annexes, other approvals and permits, including a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract, and the certifications issued by (i) the concerned Department Secretary; (ii) the Head of the bureau, office or agency; and (iii) the Head and governing board of the government-owned or controlled corporation or its subsidiary, that the contract is in accordance with all existing laws, rules and regulations.

c. Within thirty (30) days from its receipt of the Government Contracts, and any subsequent amendments or supplements thereto, NEDA shall submit its recommendation to the NEDA Board, which is chaired by the President of the Philippines, for appropriate action.

d. Within seven (7) days from the date of the NEDA Board's action, NEDA, through its Director-General, shall formally notify the Department Secretary concerned of the action of the NEDA Board, including any comments thereon.

Section 10. Submission of Government Contracts. With a view to creating a repository of all important Government Contracts, a complete copy of all Government Contracts involving an amount of at least Three Hundred Million Pesos (P300 Million) shall be submitted to NEDA, through its Director-General, within seven (7) days from the date of signing and/or approval thereof, accompanied with a complete copy of its related agreements, annexes, other approvals and permits, a detailed summary of the pertinent laws, rules and regulations governing the processing and award of the contract, and the certifications required under Section 7 hereof.

Section 11. Splitting of Government Contracts. 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 Executive Order, especially the necessity of public bidding and the requirements for exceptions therefrom in accordance with Section 3 hereof.

Section 12. Local Government Units. All contracts of Local Government Units funded by the national government shall be governed by the provisions of this Executive Order and its implementing guidelines, rules and regulations. Furthermore, Local Government Units are encouraged to apply the provisions of this Executive Order for contracts entered into and/or funded by Local Government Units.



Section 13. Prospective Application. All Government Contracts, including those presently being processed and/or reviewed by the NEDA Board in accordance with Administrative Order No. 7 dated March 23, 2001, shall hereafter be processed and/or reviewed in accordance with this Executive Order.

Section 14. Implementing Guidelines, Rules and Regulations. NEDA shall, within thirty (30) days from the effectivity of this Executive Order, issue the appropriate guidelines, rules and regulations to implement the provisions of this Executive Order.

Such guidelines, rules and regulations shall include, among others, provisions governing:

- a. ODA-funded contracts,
- b. joint venture agreements with private entities, and
- c. submission of Government Contracts to NEDA.

All such guidelines, rules and regulations shall be subject to the approval of the President of the Philippines.

NEDA may recommend penalties for violations of the provisions of this Executive Order for the approval of the President.

NEDA shall likewise submit, within the same period, a complete list of all Government Contracts required by law to be acted upon and/or approved by the President. For this purpose, NEDA may request the assistance of all departments, bureaus, offices or agencies of government, as well as government-owned or controlled corporations and their subsidiaries.

Section 15. Applicability of Existing Laws. The provisions of the following shall continue to be applicable:

- a. Executive Order No. 292 dated July 26, 1987 or the Revised Administrative Code of 1987;
- b. Presidential Decree No. 1594;
- c. Republic Act No. 6957, as amended by Republic Act No. 7718, and its Implementing Rules and Regulations;
- d. Executive Order No. 301 dated July 26, 1987; and
- e. Executive Order No. 40 dated October 8, 2001 and its Implementing Rules and Regulations.

Section 16. Repeal and Amendment. The following orders, issuances, memoranda and other Presidential issuances are hereby repealed:



- a. Executive Order No. 380 dated November 27, 1989;
- b. Executive Order No. 381 dated November 27, 1989;
- c. Executive Order No. 354 dated July 5, 1996;
- d. Administrative Order No. 7 dated March 23, 2001;
- e. Memorandum Circular No. 25 dated February 10, 1999;
- f. Memoranda from the President dated August 25, 1998, September 7, 1998, January 25, 1999, February 5, 1999, February 8, 1999, February 10, 1999, February 23, 1999, and July 12, 1999, all relating to the submission of contracts/agreements on infrastructure and infra-related projects worth P50 Million and above for review by the Office of the President;
- g. Memorandum from the President dated February 8, 2000 on Review of ODA-funded Contracts, and
- h. Memorandum from the President dated June 30, 2000 on the review of contracts disposing government land, whether by lease or sale.

Memorandum Order No. 266 dated November 28, 1989 insofar as it relates to joint venture agreements with private entities is hereby amended accordingly.

All other Presidential directives, issuances, orders, rules and regulations or parts thereof inconsistent with this Executive Order are likewise hereby repealed or modified accordingly.

Section 17. This Executive Order shall take effect immediately upon publication in two (2) newspapers of general circulation.

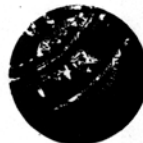
DONE in the City of Manila, this 27th day of May, in the year of our Lord Two Thousand and Two.

By the President:

Avelino J. Cruz, Jr.

AVELINO J. CRUZ, JR.
Acting Executive Secretary

J. M. [Signature]



PGMA Outgoing # 11813

