
**IMPLEMENTING GUIDELINES ON AGENCY-TO-AGENCY AGREEMENTS
Negotiated Procurement under Section 53 (e) of IRR-A**

1. POLICY RATIONALE

It is the general policy of government to purchase its requirements from the private sector. However, it acknowledges that, in some exceptional cases, procurement from another agency of the government is more efficient and economical for the government.

Thus, in accordance with Section 10 of Republic Act No. (R.A.) 9184 and its Implementing Rules and Regulations Part A (IRR-A), all procurement shall be done through open and competitive public bidding. Only in highly exceptional cases, and when justified by the conditions prescribed under these guidelines, can the procuring entity procure from another government agency under the 1st paragraph of Section 53(e) of the IRR-A of R.A. 9184.

2. PURPOSE

These guidelines are being issued to strictly prescribe the conditions when a government agency may procure from another government agency without need of public bidding pursuant to the 1st paragraph of Section 53 (e) of the IRR-A of R.A. 9184 (hereinafter, referred to as *Agency-to-Agency Agreements*).

3. SCOPE AND APPLICATION

The following are excluded from the application of these guidelines:

- a. Infrastructure projects undertaken through the Armed Forces of the Philippines Corps of Engineers (AFPCOE) which shall continue to be governed by the Guidelines on Implementation of Infrastructure Projects Undertaken by the AFP Corps of Engineers under Government Procurement Policy Board (GPPB) Resolution No. 09-2005; and
- b. Procurement of goods from the Procurement Service, which is tasked with a centralized procurement of commonly used goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, s. 1989.

4. DEFINITION OF TERMS

For the purpose of these guidelines, the following terms shall have the corresponding meanings:

- a. **Cost-benefit Analysis.** Refers to a tool used to aid decision-making by evaluating the benefits to be attained from an action against the costs for its implementation.
- b. **Procuring Agency** shall refer to any of the various units of the Government, including a department, bureau, office, instrumentality, government-owned or controlled corporation (GOCC), or a local government, or a distinct unit therein, which purchases goods, or engages the services of another agency to undertake an infrastructure project or render consultancy services.
- c. **Servicing Agency** shall refer to the agency which delivers the goods, undertakes the infrastructure project, or provide consulting services.

However, in accordance with Section 53(e) of the IRR-A of R.A. 9184, as amended, GOCCs incorporated under Batas Pambansa Blg. 168 or the Corporation Code of the Philippines, which are vested with proprietary functions to enable them to compete with the private sector, are excluded from the definition of Servicing Agency, and thus, not qualified to act as Servicing Agency under the 1st paragraph of Section 53(2) of the IRR-A of R.A. 9184.

5. GENERAL CONDITIONS

- a. Agency-to-Agency Agreements may only be resorted to if the following conditions are complied with:
 - i. Conduct of a Cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
 - ii. Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity’s total procurement budget for each category (*i.e.*, goods, infrastructure, or consulting) as reflected in its approved APP;
 - iii. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and
 - iv. Servicing Agency owns or has access to the necessary tools and equipment required for the project.

- b. In addition, for procurement of infrastructure projects under Agency-to-Agency agreements, the Servicing Agency must comply with the following conditions:
- i. It must 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
 - ii. It shall not directly or indirectly engage private contractors to undertake the project and may only implement the infrastructure project in-house, 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 Servicing Agency. Job-order contracts shall be governed by the applicable rules of the Commission on Audit and/or Civil Service Commission. *Pakyaw* Contracting System shall be governed by Section 4 of the GPPB Revised Guidelines for the Implementation of Infrastructure Projects by Administration.
- c. Subject to appropriate guidelines, the Procuring Agency may require the Servicing Agency to post a performance security under Section 39 of R.A. 9184 and/or post a warranty security under Section 62 of R.A. 9184.
 - d. All procurement to be undertaken by the Servicing Agency, including those required for the project, shall continue to be governed by the provisions of R.A. 9184.
 - e. All projects undertaken through Agency-to-Agency Agreements shall be subject to pertinent budgeting, accounting, and auditing rules.

6. PROCEDURAL REQUIREMENTS

- a. The end-user unit shall undertake a Cost-benefit analysis, taking into consideration the following factors: prevailing standard cost for the project in the market, absorptive capacity of the Servicing Agency, and such other factors.
- b. It shall likewise secure a certificate from the relevant officer of the Servicing Agency that the latter complies with all the conditions prescribed under Section 5 (a) and (b).

- c. Based on the assessment and recommendation of the end-user unit, the BAC shall issue a resolution recommending the use of Agency-to-Agency Agreement to the head of the Procuring Agency.
- d. Upon approval of the BAC resolution,, the Procuring Agency shall enter into a Memorandum of Agreement (MOA) with the Servicing Agency.
- e. Pursuant to Section 3 (c), the MOA shall reflect the agreement of the parties with regard to the posting of a performance bond and/or a warranty security.
- f. For purposes of transparency, the Procuring Agency shall post for a period of seven (7) calendar days, general information pertaining to the procurement activity conducted, in the following areas:
 - i. Philippine Government Electronic Procurement System or (PhilG-EPS);
 - ii. Website of the Procuring Agency and its electronic service provider, if any; and
 - iii. Any conspicuous place in the premises of the Procuring Agency.

7. EFFECTIVITY

These guidelines shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.