


**IMPLEMENTING RULES AND REGULATIONS
OF EXECUTIVE ORDER NO. 278, SERIES OF 2004,
PRESCRIBING GUIDELINES FOR PROJECT LOAN NEGOTIATIONS AND
PACKAGING OF GOVERNMENT FOREIGN-ASSISTED
INFRASTRUCTURE PROJECTS**

Section 1. Purpose and General Coverage

- 1.1 These Implementing Rules and Regulations (IRR) are being issued pursuant to Section 5 of Executive Order No. 278, Series of 2004, entitled "Prescribing Guidelines for Project Loan Negotiations and Packaging of Government Foreign-Assisted Infrastructure Projects," for the purpose of providing the necessary parameters governing the preparation of infrastructure project/contract packages (for both local and foreign funding) and loan negotiations for foreign-assisted infrastructure projects of all agencies or subdivisions of the National Government including Government-Owned and/or -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Local Government Units (LGUs).

Section 2. Definition of Terms

- 2.1 For the purpose of these IRR, the following terms or words or phrases shall mean or be understood as follows:
- a) **Appropriate Authorities** – refers to the head of the procuring entity defined in the IRR-A of RA 9184 as: (i) the head of the agency or body, or his duly authorized official, for national government agencies (NGAs) and the constitutional commissions or offices, and branches of government; (ii) the governing board or its duly authorized official, for Government-Owned and/or -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), and State Universities and Colleges (SUCs); or (iii) the local chief executive, for Local Government Units (LGUs).
 - b) **Complex and/or Multi-disciplinary Infrastructure Projects** - refers to infrastructure projects which cover works requiring varied competencies which can be further divided into sub-components.
 - c) **Consulting Services** - refers to services for infrastructure projects requiring adequate technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies and other related consulting services as defined in the IRR of RA 9184.
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- d) **EO** - refers to Executive Order No. 278 entitled "Prescribing Guidelines for Project Loan Negotiations and Packaging of Government Foreign-Assisted Infrastructure Projects."
- e) **Consultant** - an individual or firm, regardless of nationality, that is qualified under the IRR of RA 9184 to render consulting services as defined in these IRR and accredited as such by the umbrella organization of consultants recognized by the Government.
- f) **Foreign-Assisted Infrastructure Projects** - refers to government infrastructure projects which are wholly or partly funded by foreign loans
- g) **INFRACOM** - refers to the NEDA Board Committee on Infrastructure created under Executive Order No. 230, Series of 1987.
- h) **Infrastructure Projects** - include the construction, improvement, rehabilitation or restoration of roads and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply, sanitation and sewerage systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment.
- i) **Joint Venture** - is an alliance between two (2) or more parties for the pooling of resources, sharing of risks, obligations, liabilities, profits and losses and the existence of which may or may not be co-terminus with the completion of the project. In all cases, the responsibilities and liabilities of the joint venture partners shall be defined in the joint venture agreement and shall be in accordance with the requirements of the project. The responsible joint venture partners shall post the corresponding warranties and the necessary securities or liability insurance when awarded the contract.
- j) **Loan Negotiating Panel** - refers to the Philippine government team vested with authority to negotiate with international financing institutions or entities for the funding of government projects.
- k) **Local Funds** - refers to monetary resources from national and local government or domestic sources such as, but not limited to, continuing and annual budgetary appropriations, government revenue collections corporate earnings, grants, and government and corporate domestic borrowings.
- l) **Packaging of Projects** - refers to the apportionment of large-sized or complex and/or multi-disciplinary infrastructure projects into separable contract packages/work components considering the most logical and practical scope of work to complete a project without sacrificing its




technical integrity, optimizing project economy and efficiency, and taking into account Filipino capabilities.

- m) **Special Tax Privileges** - refers to tax privileges such as exemptions, assumptions, deductions or credits granted to foreign nationals by the Philippines under specific international tax treaty obligations.
- n) **Technical Working Group** - refers to the inter-agency committee that will provide inputs to the Philippine Loan Negotiating Panel.

Section 3. Funding for Consulting Services

- 3.1 As a general rule, consulting services for government infrastructure projects shall be funded from local funds and using local resources and expertise. Consulting services shall be proposed for foreign assistance only where foreign funding is indispensable and/or local funds are insufficient.
- 3.2 Pursuant to Section 3.1 above, the appropriate authorities are required to allocate/provide funds in their respective investment programs for the conduct of the following:
 - a) Pre-investment components which shall include, but not limited to, pre-feasibility studies, comprehensive land use plan, master development plan, feasibility studies and related surveys and special studies; or
 - b) Detailed architectural and/or engineering design and related activities (where the project is feasible); or
 - c) Project management/construction supervision.

Section 4. Hiring of Consultants


- 4.1 To promote the development of Filipino consulting services, Filipino consultants shall be hired whenever the services required for the project are within the expertise and capability of Filipino consultants.
 - 4.2 For consulting services funded through local sources where Filipino capability is determined by the appropriate authorities to be insufficient, Filipino consultants may hire or associate themselves with foreign consultants, with Filipino consultants as lead consultant.
 - 4.3 For consulting services funded through foreign sources, foreign consultants intending to participate in development projects in the Philippines shall enter into joint ventures (e.g., 60% foreign / 40% Filipino) with Filipino consultants in the interest of effecting technology transfer and/or providing expertise on local conditions, subject to the agreement between the Philippine government and the international financing institution.
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Section 5. Packaging of Government Infrastructure Projects

The following basic principles shall govern the work packaging of government infrastructure projects, irrespective of funding source:

- 5.1 Large government infrastructure projects, where feasible, shall be packaged into separable contract packages/work components without sacrificing the technical integrity of the project. For purposes of these IRR, the adjusted allowable ranges of contract cost for Large B contractors set by the Philippine Contractors Accreditation Board (PCAB) shall be used as reference points in determining large projects.
- 5.2 In the packaging of large government infrastructure projects, the technical and financial capabilities, and experience of Filipino contractors both in the domestic and international markets, as well as the most logical and practical scope of work to complete a project, must be considered.
- 5.3 Large government projects as mentioned in Section 5.1 above, including complex and/or multi-disciplinary infrastructure projects covering works of a different nature requiring varied competencies shall be packaged into separable contract packages/work components as defined below, or combinations thereof, or by number of units, or by geographical location, taking into account the provisions of Section 5.2 above:
 - 5.3.1 Vertical construction projects (schools, buildings, hospitals, houses, air/land/sea/rail terminals, power stations, lighthouses, etc.)
 - a. Foundation Works
 - b. Superstructure Works
 - c. Electro-Mechanical Works
 - d. Finishing Works
 - 5.3.2 Horizontal construction projects (bridges, railway lines, elevated railway carriages, tunnels, subways and other subterranean works, dams, dikes, water impounding structures, piers and wharves, irrigation systems, flood control systems, water or sewer pipeline systems, power stations, power transmission and/or distribution systems)
 - a. Bridge
 - a.1 Main Bridge
 - a.2 Approach
 - b. Railway lines and elevated railway carriages
 - b.1 Civil Works
 - b.2 Electro-Mechanical Works
 - b.3 Supply of Rolling Stock
 - c. Piers & wharves, irrigation systems and flood control systems
 - c.1 Dredging Works




- c.2 Civil Works
 - c.3 Buildings
 - c.4 Control Gates
 - c.5 Electro-Mechanical Works
 - c.6 Well Drilling
 - d. Water or sewer pipeline systems
 - d.1 Pump House and Appurtenant Structures (Civil Works)
 - d.2 Supply and Installation of Pumps and Accessories
 - d.3 Electro-Mechanical Works
 - d.4 Power Supply/Generator Set
 - d.5 Sub-Station
 - d.6 Tunneling Works
 - e. Power Stations
 - e.1 Foundation Works
 - e.2 Superstructure Works
 - e.3 Electro-mechanical Works
 - e.4 Supply and Installation of Power Plant
 - f. Power Transmission Lines/Sub-Stations and/or Distribution Systems
 - f.1 Supply of Materials and/or Equipment
 - f.2 Erection/Installation/Construction of Materials and/or Equipment
 - f.3 Supply and Erection/Installation/Construction of Transmission Lines/Substations and/or Distribution Systems
 - g. Tunnels, Subways and other Subterranean Works
 - g.1 Tunnel Boring Machine Works
 - g.2 Conventional Tunneling Works
 - g.3 Tunnel Lining Works
 - g.4 Tunnel Portals
 - g.5 Electro-Mechanical Works
- 5.3.3 Airports
- a. Civil Works
 - b. Electro-Mechanical Works
 - c. Ancillary Equipment Supply
 - d. Navigational and Weather Equipment and Supply
 - e. Communications Equipment
- 5.3.4 Civil works for construction of a dam and/or water impounding structure and appurtenant facilities shall consist of only one package. For hydroelectric/multi-purpose dams, however, electro-mechanical works for the power generation component may be a separate package. For flood control and irrigation dams, control gates and other appurtenant facilities shall be a separate package.
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- 5.3.5 Interconnection projects involving submarine cables, underground cables, cable terminal stations, converter stations including appurtenant facilities, irrespective of the voltage, shall consist of only one package.
- 5.4 Clustering of small and medium-sized projects may be adopted, provided that it is consistent with principles of economy and efficiency and the resulting cluster or package is within the capabilities of Filipino contractors.
- 5.5 Non-complex infrastructure projects such as roads, dikes, irrigation canals, water pipelines, and drainage shall be packaged by sections or lengths.
- 5.6 Splitting of government contracts for purposes of evading the requirement for public bidding and/or the requirements of law as provided in Section 11 of Executive Order No. 109-A is not allowed.
- 5.7 The successful completion of a single project similar in scope or nature to the project to be bid, with at least fifty (50) percent of the value of the infrastructure contract to be bid shall be acceptable as work experience in determining the criteria for eligible and pre-qualified bidders, subject to the agreement between the Philippine government and the international financing institution in cases of foreign-assisted projects.

Section 6. Determination of Filipino Capabilities

- 6.1 During the project appraisal stage, the appropriate authorities shall refer to the list of PCAB-licensed and registered constructors and/or the roster of consultants accredited by the umbrella organization of consultants recognized by the Government, and other appropriate sources to determine sufficiency of Filipino capability in undertaking specific requirements for consulting services and/or construction of infrastructure projects, in accordance with the criteria/guidelines to be prescribed by the Construction Industry Authority of the Philippines (CIAP) and approved by the INFRACOM.
- 6.2 The appropriate authorities shall endeavor to secure, during the project appraisal stage, all inputs for the packaging of infrastructure projects, including inputs from concerned private sector groups, such as, but not limited to, the Philippines Constructors Association, Inc. (PCA) and the Confederation of Filipino Consulting Organizations, Inc. (COFILCO).

Section 7. Pre- Loan Negotiations

- 7.1 Prior to loan negotiations, particularly during project packaging and appraisal, the government implementing agency shall convene a Technical Working Group (TWG) to include at least one (1) representative from the private sector to provide inputs and ensure transparency. The Department of Finance (DOF) shall invite the representative(s) upon recommendation by the CIAP, in case of infrastructure projects, and upon recommendation by the private sector concerned in case of goods and consulting services.
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- 7.2 The TWG that will provide inputs to the negotiating panel shall be composed of the implementing agency concerned, the Department of Finance (DOF), Department of Foreign Affairs (DFA), National Economic and Development Authority (NEDA), Construction Industry Authority of the Philippines (CIAP) and the private sector representatives coming from the construction industry recommended by CIAP and the umbrella organization of consultants.

Section 8. Loan Negotiation Parameters

- 8.1 Where special tax privileges are being requested to be granted to a particular class/nationality as part of the government's international commitments, the loan negotiating panel must require a written commitment from the appropriate authorities to evaluate all bids through an equalization process in order to arrive at a fair bid comparison.
- 8.2 To ensure the sustained promotion of Filipino talents in all fields, effect technology transfer, and adoption of measures that will help them become competitive, the loan agreement shall, whenever economically viable, provide for joint venture associations between Filipino and foreign firms.
- 8.3 The government negotiating panel shall ensure that the loan agreement, including exchanges of notes and other documents made integral parts thereof, do not contain provisions which discriminate against Filipinos and limit their participation in the project to be funded under the loan agreement.


Section 9. Amendments to the IRR

- 9.1 The INFRACOM may amend/revise the provisions of these IRR consistent with the intent and spirit of EO 278 as deemed necessary.
- 9.2 Amendments to these IRR shall become effective fifteen (15) days after its publication in the Official Gazette or in at least one (1) newspaper of general circulation, unless the INFRACOM specifies otherwise.

Section 10. Separability Clause.

- 10.1 If any of the provision of this IRR is declared invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

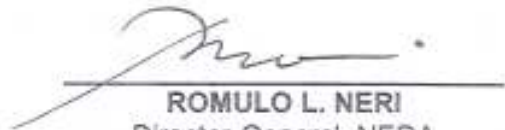
Section 11. Effectivity

- 11.1 These IRR shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.
- 11.2 These IRR shall apply prospectively to all locally-funded infrastructure projects which have not yet been advertised for bidding as of the date of effectivity of these IRR.
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- 11.3 These IRR shall also apply prospectively to all consulting services and infrastructure projects proposed for foreign funding where loan negotiations have not yet been concluded as of the date of effectivity of these IRR.


Done in the City of Pasig, this 20th day of April in the year of our Lord, Two Thousand and Four.

**FOR THE NEDA BOARD
COMMITTEE ON INFRASTRUCTURE:**



ROMULO L. NERI
Director-General, NEDA
Chair, NEDA Board Committee on Infrastructure

Attested by:



RUBEN S. REINOSO, JR.
Executive Director
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