

**Regulation of the Office of the Prime Minister on the Undertaking of Public
Mega-Project for Country Development, B.E. 2549 (2006)**

Translation

Whereas one of the means for modernizing and developing the country is for the State to undertake some essential public mega-projects in order to rectify problems arising from the shortage of basic infrastructure in the areas of public utilities and public facilities. These include a comprehensive, integrated mass transit system, an integrated water resource management system that deals with both drought and floods, as well as an efficient land and natural resources management system, all of which are significant factors in the effort to eradicate poverty. The mega-projects as mentioned may be geared towards providing greater convenience, raising the quality of life, or responding to the basic needs of the people for their livelihood. They may include the provision of an efficient and economical public health system, a modern educational system, and a comprehensive housing system for people at various levels. In addition, a number of projects may be established and designed to build economic strength and boost the country's competitiveness with other countries such as developing science and technology to the extent that they lead to reductions in import and production costs in terms of raw materials and energy, thus bringing about increased employment and use of domestic materials. These projects may require huge investments; however, they also cause development to follow in other areas on a continual and sustainable basis over the long run, which is conducive to the establishment of a Sufficiency Economy at the individual and community level.

Nevertheless, one problem that most countries often encounter is the fact that the larger and more beneficial are the projects, the larger are the requirements for capital, expertise, know-how, and high technology that is both complicated and advanced. Even though the Government sector has clear objectives for its projects, it also faces limitations in terms of Knowledge, Technology, Management and Finance. One means of pushing forward these projects for the development of the country towards becoming a modern and advanced nation, thus achieving the Government's objectives in a concrete and expeditious manner, is to invite entrepreneurs with far-reaching innovative ideas, advanced know-how, and experience, who are fully prepared in every area (KTMF), to propose their ideas and procedures for realizing the projects sought by the Government without creating an excessive burden on the State. Such proposals should include the technical format, financial and investment plan, management plan, and various options, which will enable the Government to compare and consider projects that are most suitable for Thailand.

For this reason, it is appropriate to launch some mega projects that fit the above description on a special basis in accordance with its Partnership for Development policy and mobilization of global talent for progress. Such projects should be dealt with special procurement and management procedures that are different from other general projects. In this regard, the Government must be able to assure the entrepreneurs proposing the projects that consideration of their projects shall be entirely based on the principles of good governance, in accordance with the laws and traditions of civilized nations, and carried out in a transparent, open and fair manner. All business operations shall be accorded protection in accordance with the international standard of democratic regime as well as due process of law.

By virtue of Section 11 (6), (8) and (9) of the Administrative Organization of the State Act, B.E. 2534 (1991), the Prime Minister, with the consent of the Council of Ministers, hereby issues the following Regulation:

Clause 1

This regulation is called the "Regulation of the Office of the Prime Minister on the Undertaking of Public Mega-Project for Country Development, B.E. 2549 (2006)".

Clause 2

This Regulation shall come into force as from the day following the date of its publication in the Government Gazette.

Clause 3

The Prime Minister shall have charge and control of the execution of this Regulation.

Adjudication of any problem arising from the enforcement of this Regulation, and exemption from the enforcement of this Regulation, shall be within the discretion of the Council of Ministers.

Chapter I General Provisions

Clause 4

In this Regulation,

“Public Mega-Project for Country Development” means the project which a Government agency desires to undertake for construction, procurement or provision of services to the public, requiring special knowledge and expertise, modern technology, huge investment costs, and good management, and the benefits of such project can be used in developing the country in order to resolve the problem of shortages in major infrastructure, raising the quality of life, swiftly responding to the basic needs of the people for their livelihood, or helping in building economic strength and boosting the country’s competitiveness with other countries.

“Project” means Public Mega-Project for Country Development.

“Government agency” means the Government agency at the ministerial level which initiates the Project, or of which sub-agency implements the Project.

Clause 5

Any Project that has been approved by the Council of Ministers shall be carried out in accordance with this Regulation, unless otherwise stipulated by the Council of Ministers.

The undertaking of Project in accordance with all aspects of this Regulation shall take into consideration the principles of integrity, transparency, fairness, the optimum benefits that the State deserves, the optimum expectancy in the achievement of such Project, and the expediency and worthwhile achievement thereof.

Chapter II Committee

Clause 6

There shall be a Committee for the Policy on Public Mega-Project for Country Development to be called “CPPM” in brief, comprising of the Prime Minister as Chairman, two Deputy Prime Ministers entrusted by the Prime Minister as Vice-Chairmen, the Minister of Finance, the Minister of Foreign Affairs, the Permanent Secretary for Finance, the Permanent Secretary for Commerce, the Budget Director of the Bureau of the Budget, the Secretary-General of the Board of Investment, the Secretary-General to the Prime Minister, the Secretary-General of the Council of State, the Attorney-General, the representative of the National Economic and Social Advisory Council, the representative of the Federation of Thai Industries, the representative of the Thai Chamber of Commerce, the representative of the Thai Bankers’ Association, the representative of the Council of Engineers, the

representative of the Council of Architects, the representative of the Press Council of Thailand, the representative of the Lawyers Council of Thailand, seven qualified persons appointed by the Council of Ministers from those who are not Government officials with permanent positions and salaries, Members of the National Assembly, employees or executives of State enterprises, administrators or members of local government councils, and those who hold any position in political parties. Such persons must have knowledge and expertise in any of the following fields: mass transit or transportation of goods and services; management of natural resources, environment and water resource; information and communication technology; science and technology; national defense; finance, trade and investment; development of the quality of life, public health, and education; one from each field, as members.

The Secretary-General of the National Economic and Social Development Board shall be member and secretary, and the Comptroller-General shall be member and assistant-secretary of the Committee.

The qualified members under paragraph one shall hold office for a term of two years, and shall have no interest or conflict of interests with any proposer of the Project. Any objection or adjudication regarding conflict of interests under this paragraph shall be in accordance with the law on administrative procedure.

Clause 7

The CPPM shall have the following powers and duties:

- (1) to propose policies concerning public mega-project to the Council of Ministers;
- (2) to consider and give opinions concerning the results of the selection of proposer of Project, as submitted by the Administrative Committee, or propose other options to the Council of Ministers for consideration;
- (3) to carry out other activities under this Regulation or as entrusted by the Council of Ministers;
- (4) to appoint any sub-committee or person to perform the duties as entrusted.

Clause 8

Within each Government agency, there shall be an Administrative and Supervising Committee on Public Mega-project for Country Development, to be called "the Administrative Committee" in brief, comprising of the Minister of the Ministry initiating the Project as Chairman, the Deputy Minister of the Ministry initiating the Project (if any), the Permanent Secretary of the Ministry initiating the Project, the representative of the Ministry of Finance, the representative of the Bureau of the Budget, the representative of the Office of the National Economic and Social Development Board, the representative of the Office of the Council of State, the representative of the Office of the Attorney-General, the representative of the Comptroller-General's Department, five qualified persons appointed by CPPM from persons with knowledge and expertise in the field related to the Project, and one more from the field of finance as members, and a Government official holding the position of the Head of Department, or equivalent, appointed by the Minister of the Ministry initiating such Project as member and secretary.

The qualified members under paragraph one shall hold office for a term of two years, and shall have no interest or conflict of interests with any proposer of Project. Any objection or adjudication regarding conflict of interests under this paragraph shall be in accordance with the law on administrative procedure.

In the case where any Government agency is responsible for more than one Project, a separate Administrative Committee shall be established for each Project.

The Administrative Committee shall have the following powers and duties:

- (1) to consider the details of the proposals of Project;
- (2) to prepare and submit to the CPPM a memorandum concerning the results of the consideration of proposals, as submitted by the Government agency, or to prepare a proposal of other options for consideration by the CPPM;

- (3) to administer and supervise the undertaking of the Project in accordance with the objectives and the terms and conditions stipulated in the contract;
- (4) to report the results of undertaking, progress, as well as problems encountered and corrective measures to the Government agency and the Council of Ministers on a quarterly basis.
- (5) to carry out other activities under this Regulation, or as entrusted by the CPPM or the Council of Ministers.

Chapter III

Initiation and Proposal of Project

Clause 9

A Government agency shall propose its Project to the Council of Ministers. When any Project has been approved by the Council of Ministers, there shall be organized a forum to express the intention of the State and the preliminary scope of work to interested parties. For this purpose, the Government agency shall establish an information unit to facilitate, provide information in detail, and answer any question of the interested parties.

Clause 10

After the actions under Clause 9 have been taken, the Government agency concerned shall establish an Administrative Committee under Clause 8 in order to prepare and set out procedures including the details for submission of proposal of the Project under its powers and duties.

Clause 11

In implementing the Project under this Regulation, if any action is required by any law, such law shall be complied. However, in respect of the implementation under the Regulation of the Office of the Prime Minister on Procurement of Supplies, this Regulation, the Resolutions of the Council of Ministers, or the advice of the CPPM shall apply thereto instead.

Chapter IV

Invitation to Bid, Submission of Proposal of Project and Consideration of Project

Clause 12

With the approval of the Administrative Committee, the Government agency concerned shall issue an invitation to bid so as to call for the submission of proposals to the Project as approved by the Council of Ministers.

The invitation to bid shall be publicized through the websites of the Government agency concerned and the Comptroller-General's Department, and shall be sent to the Public Relations Department, radio or television broadcasting stations and newspapers. The permanent representation of foreign countries situated in Thailand, such as embassies, shall also be notified so as to ensure widespread dissemination of information.

The dissemination of information in foreign countries shall be undertaken by the Ministry of Foreign Affairs through the websites of Government agency in the foreign countries.

The invitation to bid shall be issued at least 30 days before the date set for the receipt of bid documents from proposers of Project.

Clause 13

The invitation to bid shall be issued in Thai language accompanied by an English translation. The invitation to bid shall at least contain the following substantial particulars:

- (1) the intention of the State regarding the Project;
- (2) qualifications of those eligible to submit proposals of Project;
- (3) objectives and scope of work involved in the Project;
- (4) date, time and place for the submission of proposals of Project; deadline for the receipt of bid documents; and the opening of the bids for consideration;
- (5) criteria and conditions for the implementation of Project, encompassing technical proposals, implementation plan and benefits to be obtained, Project duration, and such other proposals as may be deemed beneficial to the State or to the consideration. However, the financial or investment proposals may or may not be included therein;
- (6) criteria and method of preliminary consideration to be employed by the Government in the selection of the bids; and
- (7) preparation of financial and investment proposals in the form prescribed by the Ministry of Finance, with the approval of the Council of Ministers.

The invitation to bid shall specify clearly that the State reserves the right not to select any proposal or to cancel at any time any Project that the contract has not yet been signed. Accordingly, proposers of Project shall have no right to sue for any damages from the Government agency or the State.

The proposer of Project shall be a juristic person or group of juristic persons, which may or may not be established under Thai law, and which may or may not have Thai co-investors.

Clause 14

In submitting any proposal of Project according to the invitation to bid, proposers of Project may offer other options or make proposals that are different in certain respects from the intention of the Government agency as contained in the invitation to bid.

The Secretary-General to the Prime Minister, or any person entrusted by the Secretary-General to the Prime Minister, shall accept the bid documents from the proposers of Project at the date, time and place specified in the invitation, and send them to the Government agency to examine and finish the examination of the preliminary qualifications within a reasonable period of time, and then all the documents shall be submitted to the Administrative Committee for consideration. The Government agency shall prepare a memorandum summarizing the proposal for dissemination through the websites of the Government agency and the Comptroller-General's Department for a consecutive period of not less than seven days.

For any Project without financial and investment proposals, the following actions shall be taken before the actions under Clause 15:

- (1) in case the invitation to bid calls for the submission of technical and other proposals, without requiring the submission of financial and investment proposals, the Administrative Committee may request the proposers of Project who have already passed the consideration of technical and other proposals to submit their financial and investment proposals for consideration;
- (2) In case the proposer of Project has not yet submitted financial and investment proposals, but the Administrative Committee is of the opinion that technical, financial, investment, and other proposals, should be considered altogether, the Administrative Committee may inform such proposer of Project to prepare financial and investment proposals within the specified period;
- (3) In the cases other than (1) and (2), the procedures shall be as specified by the CPPM.

The proposals of Project shall not involve joint ventures, participation or concessions under the law on private participation in State undertaking, and shall not constitute an infringement of the law on offences relating to the submission of price bids to State agencies. Otherwise the Administrative Committee may inform the proposers of Project to rectify their proposals. In addition, before the Council of Ministers passes a resolution approving the proposal of any Project, the Administrative Committee may instruct the Government agency to request the proposer of Project to improve the proposal. In this regard, the Administrative Committee or the Government agency which initiates the Project may also request any competent officials or the proposer of Project to give explanations or answer more questions during any stage of the consideration. This shall be considered as providing information to supplement the consideration, and to make clear the matter for the best interests of the State.

All proposals shall not create any obligation on the Government agency and the State, unless the contract for implementation of the Project has been signed.

Clause 15

In considering each proposal of Project, the Administrative Committee shall prepare a memorandum of the results of consideration of the Project in technical, financial, investment, and other aspects. The results of consideration of all Projects, or other options which the Administrative Committee deems fit, shall be submitted to the CPPM and may set priorities as appropriate.

The deliberations of the Administrative Committee shall be open to the public and may also be broadcasted via radio or television transmission.

Clause 16

Upon receiving the matter from the Administrative Committee, the CPPM may instruct the Administrative Committee to make additional queries; request evidences; or enter into bargaining negotiation on prices, conditions, time or certain supplementary details with any proposer of Project. However, the CPPM may invite any proposer of Project to negotiate directly on such matter.

The deliberations of the CPPM shall be open to the public and shall also be broadcasted via radio or television transmission.

Moreover, the CPPM may request Thai or foreign experts or technicians who are knowledgeable about the implementation of such Project, either in whole or in part, to give statements or advice.

The CPPM shall prepare a memorandum of the results of consideration of the Project and submit all the results or other options that the CPPM deems fit to the Council of Ministers, and shall set the priorities as appropriate.

In submitting the matter for consideration of the Council of Ministers, the Secretariat of the Cabinet shall also request the opinions of the agencies concerned in accordance with normal practice.

Clause 17

Upon the Council of Ministers' approval of a proposal of Project, the Government agency shall send the draft contract, terms and conditions and supplementary documents attached thereto, both in Thai and English versions, to the Office of the Attorney-General for examination prior to signing the contract.

The Office of the Attorney-General shall examine the draft contract, terms and conditions and supplementary documents attached thereto and finish the examination within 60 days from the date of receiving the documents from the Government agency which initiates the Project.

The settlement of disputes between contracting parties shall be in accordance with the terms of the contract, which must be in conformity with the norms of international trade and investment.

Clause 18

The Regulation of the Office of the Prime Minister on the Procurement of Supplies shall apply mutatis mutandis to the acceptance of work done on the Project, the method of verifying acceptability, the inspection and supervision, the appointment of an inspection committee, a hiring committee, supervisors, and officials of the committees, in so far as it is applicable. However, the Administrative Committee may propose to the Council of Ministers to adjust the procedures to suit the special character of the Project.

Clause 19

All the timeframes under this Regulation may be shortened or extended by the Administrative Committee, the CPPM, or the Council of Ministers, as the case may be, during the timeframe of its consideration, taking into account the principles of flexibility, fairness and optimum interests of the State.

Chapter V Supervision and Monitoring

Clause 20

Upon the signing of the contract, the Administrative Committee shall perform the following duties:

- (1) to administer and supervise the implementation of the Project so as to comply with the objectives and the terms and conditions set forth in the contract; and
- (2) to report the results of the undertaking, the progress, as well as problems encountered and corrective measures, to the Government agency on a quarterly basis for further submission to the Council of Ministers.

Transitory Provisions

Clause 21

In the implementation under Chapter III of this Regulation, the Coordinating Committee on the Implementation of the Policy on Partnership for Development, under the Order of the Office of the Prime Minister No. 12/2549, dated 16th January 2006, shall be the overall coordinator to ensure proper implementation.

Clause 22

Actions taken by Government agency and the Council of Ministers prior to the date this Regulation comes into force shall be considered valid. However, all subsequent actions shall be taken in accordance with this Regulation.

Given on 2nd February B.E. 2549 (2006)

Signed by Pol. Lt. Col. Taksin Shinawatra

Prime Minister

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