

**TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units**

**SUBJECT : Information on Procurement Modalities in Case of Emergencies**

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## **1.0 Policy Statement**

All procurement shall be undertaken through Competitive Bidding. However, when justified by the conditions provided in RA 9184 and its IRR, a PE may, in order to promote economy and efficiency, resort to any alternative method of procurement, provided that it shall ensure that the most advantageous price and contract for the Government is obtained.<sup>1</sup>

During emergency cases and when warranted by circumstances, procurement may be undertaken through any appropriate alternative method of procurement, in which case, ordinary selection processes and procedures for Competitive Bidding need not be undertaken.

## **2.0 Parameters**

RA 9184 and its IRR provide the parameters in resorting to alternative methods of procurement, including those that may be undertaken during emergency cases, thus:

- 2.1 There must be prior approval by the Head of the Procuring Entity (HOPE) or his duly authorized representative to resort to alternative method of procurement and such modality, together with the other information of the specific procurement project, shall be reflected in the Annual Procurement Plan (APP).<sup>2</sup>
- 2.2 The purpose must be to promote economy and efficiency.
- 2.3 The conditions justifying the resort to any alternative methods of procurement must be present.
- 2.4 In all instances, the PE must ensure that the most advantageous price and contract for the Government is obtained.

## **3.0 Specific Conditions**

3.1 Shopping under Section 52.1(a) of the IRR of RA 9184 - allows PE to ***procure directly from suppliers of known qualification***, whenever:

- 3.1.1 The procurement involves readily available off-the-shelf Goods or ordinary/regular equipment; AND

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<sup>1</sup> Section 10, in relation to Section 48 of RA 9184.

<sup>2</sup> The APP shall include provisions for foreseeable emergencies, the amount of which shall not be more than four percent (4%) of the Procuring Entity's total appropriations for Maintenance and Other Operating Expenses (MOOE). (Generic Procurement Manual, Volume I, page 39).

- 3.1.2 There is an unforeseen contingency requiring immediate purchase.
- 3.2 Negotiated Procurement (Emergency Cases) under Section 53.2 of the IRR of RA 9184 - permits a PE to ***directly negotiate with a technically, legally and financially capable supplier, contractor or consultant***, in case:
  - 3.2.1 There is imminent danger to life or property during a state of calamity<sup>3</sup>;
  - 3.2.2 Time is of the essence arising from natural or man-made calamities;
  - 3.2.3 Other causes where immediate action is necessary to prevent damage to or loss of life or property; OR
  - 3.2.4 To restore vital public services, infrastructure facilities and other public utilities.
- 3.3 Negotiated Procurement (Take-Over of Contracts) under Section 53.3 of the IRR of RA 9184 - permits a PE to ***directly negotiate with a technically, legally and financially capable supplier, contractor or consultant***, provided that:
  - 3.3.1 Contracts have been rescinded or terminated for causes provided for in the contract and existing laws; AND
  - 3.3.2 Immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities
- 3.4 The above-mentioned alternative methods of procurement does not preclude the PE from resorting to any other alternative methods of procurement during emergency cases, provided that the conditions laid down in RA 9184 and its IRR are complied with.

#### 4.0 Posting Requirements

In resorting to the above-mentioned alternative methods of procurement during emergency cases, ordinary selection processes and procedures for Competitive Bidding need not be undertaken. PEs may directly procure contracts, without the need to post an invitation or notice in the PhilGEPS website, the website of the PE concerned, if available, and at any conspicuous place reserved for the purpose in the premises of the PE, from the following contractors:

- 4.1 For Shopping under Section 52.1(a) of the IRR of RA 9184, to a supplier of known qualification and to whom a Request for Quotation (RFQ) has been sent by the PE;
- 4.2 For Negotiated Procurement (Emergency Cases), to a technically, legally and financially capable supplier, contractor or consultant, without the need to secure three (3) price quotations; and

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<sup>3</sup> State of Calamity is a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard, Section 3(II) of RA 10121.

- 4.3 For Negotiated Procurement (Take-Over of Contracts), to the second lowest calculated/highest rated bidder for the project under consideration at the bidder's original bid price, if found to be technically, legally and financially capable to undertake the project, subject to the provisions of Sections 53.3.1 to 53.3.3 of the IRR of RA 9184.

In all cases, however, the BAC, through the Secretariat, shall post, for information purposes, the Notice of Award in the PhilGEPS website, the website of the PE concerned, if available, and at any conspicuous place reserved for the purpose in the premises of the PE, except for those procured through Shopping under Section 52.1(a) of the IRR of RA 9184 with ABCs equal to Fifty Thousand Pesos (Php 50,000.00) and below.

## 5.0 HOPE's Authority

- 5.1 Notwithstanding the procedural requirements or guidelines under existing issuances for alternative methods of procurement, the HOPE, based on its official duties, legal mandate and the principle of command responsibility, shall have full authority and responsibility in directing the Bids and Awards Committee (BAC), or any office within the agency in case of failure to constitute the BAC, to resort to a specific alternative method of procurement, upon determination that all the conditions warranting the use of any alternative method of procurement are present.
- 5.2 The HOPE shall ensure proper documentation of all procurement activities undertaken during emergency situations before award of contract is made.

## 6.0 GPPB Authority

- 6.1 GPPB Approval is *not necessary* for government contracts procured through any of the alternative methods of procurement involving an *Approved Budget for the Contract (ABC) less than Five Hundred Million Pesos (PhP 500,000,000.00)*.
- 6.2 However, where the HOPE 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 Five Hundred Million Pesos (Php 500,000,000.00) falls under any of the exceptions from competitive bidding*, the HOPE shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, *obtain the approval of the Government Procurement Policy Board (GPPB) that said Government proposed procurement undertaking falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate.*<sup>4</sup>

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<sup>4</sup> Section 4, EO 423, series of 2003, as amended by EO 645, series of 2007.