

**NPM No. 005-2020**

8 July 2020

## HEADS OF PROCURING ENTITIES

**Re: Procurement of Coronavirus Disease 2019 (COVID-19)-Related Projects After the Expiration of Republic Act No. 11469 or the *Bayanihan* to Heal as One Act**

**Dear Sir/Madam:**

In light of the end of the effectivity of Republic Act (RA) No. 11469<sup>1</sup> or the *Bayanihan* to Heal as One Act (*Bayanihan* Act), which is the basis for the issuance of the Government Procurement Policy Board (GPPB) Circular No. 01-2020<sup>2</sup> on Emergency Procurement under the *Bayanihan* Act, we are issuing this clarificatory opinion to guide all procuring entities (PEs) in the procurement of Coronavirus Disease 2019 (COVID-19)-related supplies, materials, equipment, and other critical services.

At the outset, it must be emphasized that pursuant to Item 11 of Circular No. 01-2020, PEs which issued a Notice of Award during the effectivity of said Circular, i.e., on or before 23 June 2020, may proceed with their contract implementation even after said effectivity date. Those that did not make it within the cut-off date may resort to emergency procurement under RA No. 9184, subject to conditions.

Indeed, even prior to the passage of the *Bayanihan* Act, emergency procurement may already be undertaken under Section 53(b) of RA No. 9184 and Section 53.2 of its 2016 revised IRR. In sum, Negotiated Procurement under Emergency Cases ("Emergency Procurement") may be availed of under any of the following instances:

- a. in case of ***imminent danger to life or property during a state of calamity***;
- b. when ***time is of the essence arising from actual or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property***; or
- c. to ***restore vital public services, infrastructure facilities and other public utilities***.

The rules for Emergency Procurement under RA No. 9184 were further streamlined with the issuance of GPPB Resolution Nos. 03-2020<sup>3</sup> and 05-2020<sup>4</sup> dated 9 March 2020 and 20 March 2020, respectively. Moreover, in anticipation of questions and clarifications on procurement relating to COVID-19 response, we issued Non-Policy Matter Opinion No. 003-2020 last 23 March 2020 to guide all PEs.

Thus, the instances or situations where the foregoing conditions may be applied include the provision of immediate response and initial recovery steps to avoid loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic.

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<sup>1</sup> Effective for three (3) months. Signed on 24 March 2020 and took effect immediately upon its publication in the Manila Bulletin on 25 March 2020.

<sup>2</sup> Guidelines for Emergency Procurement under Republic Act No. 11469 or the *Bayanihan* to Heal as One Act dated 6 April 2020.

<sup>3</sup> Approving the Adoption of Efficient, Effective and Expedient Procurement Procedures during a State of Public Health Emergency.

<sup>4</sup> Approving the Acceptance of an Expired Mayor's Permit with Official Receipt for the Renewal Application and Unnotarized Omnibus Sworn Statement as basis for award under the Negotiated Procurement (Emergency Cases) Modality.

We likewise note that the procedure for Emergency Procurement under RA No. 9184, as amended under GPPB Resolutions Nos. 03-2020 and 05-2020 is almost identical with the Emergency Procurement under the *Bayanihan* Act sans few improvements afforded by the exemption of the latter from the provisions of RA No. 9184.

The determination of the existence of all the legal conditions warranting resort to Emergency Procurement under RA No. 9184 or any of the alternative methods of procurement for that matter, falls solely within the ambit of the authority and accountability of the PE being the one responsible for the procurement planning which includes the identification of goods and services needed to undertake their respective mandates as well as the specific requirements for each of the procurement activity.

Should PEs determine that Emergency Procurement under RA No. 9184 is not applicable, other modalities are available under RA No. 9184. There is competitive bidding, as a general rule, in accordance with Section 10<sup>5</sup> of RA No. 9184 and its 2016 revised IRR and other alternative methods of procurement under Rule XVI of RA No. 9184 and its 2016 revised IRR, as the circumstances and may warrant.

Further, the GPPB issued Resolution No. 09-2020<sup>6</sup> on “Approving Measures for the Efficient Conduct of Procurement Activities during a State of Calamity, or Implementation of Community Quarantine or Similar Restrictions”. This provides measures and options for PEs to undertake for procurement activities during a national or locally declared state of calamity as well as in the case of implementation of community quarantine or similar restrictions. The said measures when properly applied by PEs will facilitate the procurement of Goods, Infrastructure and Consulting Services, whether or not related to the COVID-19 pandemic, to ensure the continuous delivery of public services and support the government as it responds to the many challenges of governance.

In fine, the lapse of the effectivity of the *Bayanihan* Act does not preclude PEs from expeditiously procuring the needed Goods, Infrastructure, and Consulting Services given that other modes of procurement and efficient measures for the conduct thereof have been put in place pursuant to RA No. 9184, its IRR and related issuances, and as further enhanced by the recent GPPB issuances discussed above.

For the information and guidance of all.

**ROWENA CANDICE M. RUIZ**  
Executive Director V

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<sup>5</sup> Section 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

<sup>6</sup> Dated 7 May 2020.