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CIRCULAR 09-2018
20 December 2018

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: Award of Contract under a Reenacted Budget

1.0 PURPOSE

This Circular is issued to guide Procuring Entities in the award of contract undertaken through Early Procurement Activities (EPA) under a reenacted budget. EPA shall refer to the conduct of procurement activities for Goods to be delivered, Infrastructure Projects to be implemented, and Consulting Services to be rendered in the following fiscal year, pending approval of the General Appropriations Act (GAA), Corporate Budget or Appropriations Ordinance, as the case may be. EPA shall commence from the posting of the procurement opportunity, if required, until recommendation to the Head of the Procuring Entity (HoPE) as to the award of the contract.

2.0 SCOPE

All 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.

3.0 EARLY PROCUREMENT ACTIVITIES

3.1 General Provisions of the 2018 GAA, similar to the 2016 and 2017 GAAs, authorize government agencies to undertake early procurement activities, thus:

***“Sec. 19. Early Procurement Activities.** To ensure full budget utilization, timely contract implementation and efficient delivery of services, agencies are authorized to undertake procurement activities from pre-procurement conference until post-qualification of bids based on their proposed budget in the National Expenditure Program, Corporate Operating Budgets or Appropriations Ordinances, in accordance with the guidelines issued by the GPPB.*

For multi-year projects, the issuance of Multi-Year Obligational Authority (MYOA) or any similar document as may be prescribed by the DBM is required prior to commencement of any procurement activity

Agencies may only proceed with the awarding of contract upon approval or enactment of their respective appropriations or budget authorization document, as the case may be, and based on the amount authorized.”

- 3.2 Section 7.6 of the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 likewise contains a similar provision on the conduct of early procurement activities, thus:

“To facilitate the immediate implementation of procurement of Goods, Infrastructure Projects or Consulting Services, even pending approval of the GAA, corporate budget or appropriations ordinance, as the case may be, and notwithstanding Section 7.2 hereof, the Procuring Entity may undertake the procurement activities short of award.

NGAs, SUCs, Constitutional Commissions or Offices are encouraged to start their procurement activities immediately after the National Expenditure Program (NEP) has been submitted by the President to Congress, provided that the HoPE has approved the corresponding indicative APP. This will facilitate the awarding of procurement contracts after the enactment of the GAA, enabling the timely implementation and completion of programs and projects.

For a contract with a period not exceeding one (1) year, the ABC shall be based on the amount in the indicative APP as included in the proposed national budget submitted by the President to Congress; for GOCCs, on budget levels as proposed to the governing board; or for LGUs, on budget levels as proposed in the executive budget submitted to the Sanggunian. In the case of multi-year contracts, for which a MYOA or an equivalent document is required, the ABC shall be the amount reflected in the MYOA or equivalent document.

No award of contract shall be made until the GAA, corporate budget or appropriations ordinance, as the case may be, has been approved or enacted”

- 3.3 Under Section 20.1(c)(i) of the 2016 IRR of RA 9184, “[f]or the purpose of pre-procurement conference, pending the approval or enactment of the GAA, corporate budget or appropriations ordinances, as the case may be, the certification of availability of funds refers to the amount in the indicative APP consistent with the NEP, or MYOA or its equivalent document, the proposed corporate budget or executive budget”.

4.0 REENACTED BUDGET

Under Paragraph 7, Section 25, Article VI of the 1987 Constitution, “[i]f, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress”.

5.0 CIRCUMSTANCES CONSIDERED

- 5.1 The possibility of a reenacted budget for FY 2019 and the belated approval of a new General Appropriations Act (GAA) for FY 2019;
- 5.2 In case the budget levels for recurring activities or projects as proposed in the FY 2019 NEP are lower than those included in the FY 2018 GAA, which will be the basis for the FY 2019 Reenacted Budget;
- 5.3 The period of the award of new projects under the FY 2019 NEP but not covered under the FY 2018 GAA; and
- 5.4 The effect on the procurement timelines and bid validity and security for the award of new projects pending the passage of a new GAA for FY 2019.

6.0 GUIDELINES:

- 6.1 The Award of Contract on any activity or project undertaken through EPA using the 2019 NEP under the FY 2019 Reenacted Budget shall be acted upon accordingly:
 - 6.1.1 Procurement projects covering recurring activities or projects, hence appropriations therefor are included in both the FY 2018 GAA and FY 2019 NEP, undertaken through EPA under the FY 2019 NEP may be awarded on the basis of the FY 2019 Reenacted Budget.
 - 6.1.2 In case the amount appropriated for the recurring activities or projects in the FY 2019 Reenacted Budget is within the amount of contract to be awarded but with a higher Approved Budget for the Contract (ABC) as included in the FY 2019 NEP, the same may be awarded on the basis for the FY 2019 Reenacted Budget.
- 6.2 New activities or projects that are included in the FY 2019 NEP, hence not part of the FY 2018 GAA, may be awarded on the basis of the FY 2019 GAA; *provided*, the 15-day period for the Head of the Procuring Entity (HoPE) to approve the Resolution of the Bids and Awards Committee (BAC) and to issue the Notice of Award provided under Section 37 and the three-month (3) period within which to complete the procurement process under Section 38 of RA No. 9184 shall be tolled or suspended or shall not be counted beginning January 1, 2019 until the effectivity of the new GAA for FY 2019. Hence, the period of time for the award of contract and termination of the procurement process, as the case may be, shall begin to run again upon the effectivity of the new GAA for FY 2019. The HoPE has the remaining period or the period of time left for award of contract and termination of the procurement process, as the case may be, counted from the effectivity of the new GAA for FY 2019.
- 6.3 In all instances, the HoPE shall not award any procurement project if the amount appropriated under the FY 2019 Reenacted Budget is lower than the amount of contract to be awarded in accordance with Section 41 of RA 9184 which grants the HoPE the right not to award the contract if, for any justifiable and reasonable ground, the award of the contract will not redound to the

benefit of the GoP, i.e., if the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

- 6.4 For purposes of Awards of Contracts under a Reenacted Budget, the 15-day period for the HoPE to approve the Resolution of the BAC and to issue the Notice of Award provided under Section 37 and the three-month (3) period within which to complete the procurement process under Section 38 of RA No. 9184 shall be tolled or suspended or shall not be counted beginning January 1, 2019 until the effectivity of the new GAA for FY 2019.

Hence, the period of time for the award of contract and termination of the procurement process, as the case may be, shall begin to run again upon the effectivity of the new GAA for FY 2019.

Accordingly, the HoPE has the remaining period or the period of time left for award of contract and termination of the procurement process, as the case may be, counted from the effectivity of the new GAA for FY 2019.

- 6.5 The validity of bids and, if applicable, the bid securities, shall be extended, at the option of the bidder, to adjust to the new procurement timeline in case the period is tolled pending the enactment of the new GAA for FY 2019.
- 7.0 The provisions of GPPB Circular 01-2009 dated 20 January 2009 which are inconsistent with any of the provisions of this Circular are hereby revoked or modified accordingly.
- 8.0 This Circular shall take effect on 01 January 2019.
- 9.0 For guidance and compliance.

(SGD)

BENJAMIN E. DIOKNO
Chairperson