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CIRCULAR LETTER

No. 2010-9

December 30, 2010

TO : Heads of Departments/Agencies/State Universities and Colleges and Other Offices of the National Government; Budget Officers; Heads of Accounting Units; and All Others Concerned

SUBJECT: Guidelines Directing Agencies to Expedite the Implementation of their Procurement Activities

1.0 RATIONALE

The Government Procurement Policy Board (GPPB), thru Circular Nos. 02-2008 and 01-2009, has issued clarificatory guidelines in undertaking the procurement activities of government agencies (i.e., contracting for infrastructure projects and procurement of goods/services). The guidelines emphasize the requirements to be complied by the implementing units for bidding purposes as well as in awarding of contract.

In line with the above-cited Circulars, pending approval of the General Appropriations Act (GAA) and/or receipt of the allotments (obligational authority) issued by DBM, agencies can start undertaking the initial processes of their procurement activities based on the proposed budget levels per National Expenditure Program (NEP), specifically for purposes of conducting public bidding.

Said practice will allow early implementation of projects i.e., construction of farm-to market roads, irrigation projects and other infrastructure projects which are scheduled during the first quarter of the year in consideration of our country's good weather condition.

2.0 PURPOSE

- 2.1 To fast-track the implementation of priority projects of the government; and
- 2.2 To reiterate, expand or amend certain provisions of GPPB Circular Nos. 02-2008 and 01-2009 on the procedures to be adopted in undertaking procurement activities **prior** to the approval of the GAA and receipt of the allotments issued by DBM for the purpose.

3.0 COVERAGE

- 3.1 All departments, bureaus, offices and agencies of the national government including state universities and colleges (SUCs).
- 3.2 Government-owned and/or controlled corporations (GOCCs) and local government units (LGUs) which are tapped as implementing units and recipients of fund transfers from the national government.

4.0 DEFINITION OF TERMS

- 4.1 Allotment – document issued by the DBM which authorizes an agency to incur obligations for a specific amount as contained in a legislated appropriation. The allotment issued may either be through the Agency Budget Matrix (ABM) which covers the comprehensive release of specifically appropriated items in the agency's budget or through the Special Allotment Release Order (SARO).
- 4.2 Annual Procurement Plan (APP) – the requisite document that the agency must prepare to reflect the necessary information on the entire procurement activities (i.e., goods, services, civil works to be procured) that it plans to undertake within the calendar year, as follows:
 - 4.2.1 Name of the procurement program/project;
 - 4.2.2 Project management office or end-user unit;
 - 4.2.3 General description of the procurement;
 - 4.2.4 Procurement method to be adopted;
 - 4.2.5 Time schedule for each procurement activity;
 - 4.2.6 Source of fund; and,
 - 4.2.7 Approved Budget for the Contract.

- 4.3 Approved Budget for the Contract (ABC) – refers to the following:

NGAs including SUCs

- 4.3.1 For specifically appropriated items as reflected in the annual budget of the agency, the amount corresponding to either the full cost of a single year or multi-year program/project/activity. For multi-year projects, for which a Multi-Year Obligational Authority (MYOA) has been issued, the ABC shall be the amount reflected in the MYOA.
- 4.3.2 For lump sum allocation of a department or agency, this corresponds to the allocation of the specific implementing unit (IU) as determined by the head of the department/agency.

GOCCs and LGUs (cited under item 3.2 of this Circular)

- 4.3.3 In the case of GOCCs, including government financial institutions as well as LGUs, the ABC represents the amount of fund transfers which they receive from a national government agency to implement a program/project/activity.
- 4.4 Implementing Units (IUs) – agencies or bureaus within a department of the national government, or a GOCC or LGU tasked to undertake a program/project/activity.
- 4.5 Lump-sum Appropriations and Centrally Managed Items (CMIs) – those items in the budget of agencies for which the IUs and the specific amounts allocated for each have not been identified in the National Expenditure Program or the GAA.
- 4.6 Multi-Year Obligational Authority (MYOA) – a document issued by DBM either for locally funded projects or foreign assisted projects implemented by agencies in order to authorize the latter to enter into multi-year contracts for the full project cost. A MYOA, which contains an annual breakdown of the full project cost, requires agencies to include in their budget proposal for the ensuing years the amount programmed for the said year(s).

- 4.7 Multi-Year Projects (MYP) – refer to budgetary programs/projects/activities which will take more than one (1) year to complete. These may be classified into:
- a) MYPs with appropriations available in full during the first year of implementation;
 - b) MYPs which require multi-year appropriations; and,
 - c) Annual Recurring Projects/Activities which require multi-year appropriations.
- 4.8 National Expenditure Program (NEP) – the proposed national budget submitted by the President to Congress in accordance with Section 22, Article VII of the Constitution. The NEP shall be the basis of the General Appropriations Bill, which upon its enactment, becomes the GAA.
- 4.9 Project Procurement Management Plan (PPMP) – refers to the procurement plan of a specific program/project/activity (PAP) of the agency. This shall include information on whether the PAP will be contracted out, implemented by administration or consigned; the type and objectives of contract to be employed; the extent/size of contract scopes/packages, the procurement methods to be adopted, time schedule for each procurement activity and contract implementation, and estimated budget for the general components of the contract.
- 4.10 Single Year Projects (SYPs) – refer to programs/projects/activities which have an implementation period of not more than a year.

5.0 **General Guidelines**

- 5.1 Pursuant to the R.A. 9184 and its Implementing Rules and Regulations (IRR), government procurement involves the following processes:
- 5.1.1 Procurement planning – involves the preparation/updating of the agency's Project Procurement Management Plan (PPMP) by individual project, the consolidation of all PPMPs into the APP and approval of the APP by the agency head.
 - 5.1.2 Pre-Procurement conference – assessment of the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end-user.
 - 5.1.3 Advertisement and/or Posting of the Invitation to Bid – announcing to the public the proposed projects and inviting bidders to join the bidding, thru the following media: newspaper of general nationwide circulation, PhilGEPs website, procuring entity's website and conspicuous places.
 - 5.1.4 Pre-bid Conference - the forum where the procuring entity's representatives and the bidders discuss the different aspects of the project.
 - 5.1.5 Submission and Receipt of Bids – involves the submission by the bidders of two (2) separate sealed envelopes containing the technical and financial components, and the receipt by the BAC of said envelopes on such date, time and place as specified in the invitation to bid.

- 5.1.6 Opening and Evaluation of Bidders' Envelope - eligibility check of the prospective bidders.
 - 5.1.7 Detailed Evaluation of Bids – evaluation of the financial component of the bids and ranking of the bids which passed the preliminary examination, from lowest to highest bidder in terms of their calculated price.
 - 5.1.8 Post Qualification of Bids - verification and validation on whether the lowest bidder, in the case of procurement of goods and infrastructure projects or the highest bidder, in the case of consulting services, has passed all the legal/ technical/financial requirements and conditions as specified in the Bidding Documents.
 - 5.1.9 Award of Contract - awarding of contract to the lowest calculated responsive bid or the highest rated responsive bid.
 - 5.1.10 Notice to Proceed - issuance of the Notice to Proceed together with a copy of the approved contract to the successful bidder within 7 calendar days from the date of approval of the contract by the approving authority of the agency.
 - 5.1.11 Contract Implementation – actual implementation of the project.
- 5.2 All government procurement shall be undertaken in accordance with the agency's **APP** (cited under items 4.2 and 5.1 above) duly approved by its agency head. The APP should clearly indicate, among other information, the funding source of the projects i.e., specifically appropriated **or** funded from lump-sum appropriations.
- 5.3 As a general rule, all procurements should be within the approved budget of the procuring agency. The delay, however, in the approval of the GAA should not deter the procuring agency in commencing its procurement activities. To ensure implementation of projects within the scheduled work targets pending approval of the GAA, the cost of the projects to be indicated in the **ABC** shall be based on the budget levels provided in the **NEP** submitted to Congress.
- 5.3.1 For line item projects with specific appropriations, including MYPs, the agencies shall use as basis the amount provided in the NEP.
 - 5.3.2 For lump-sum appropriations or CMIs under the agency budget, the head of the agency shall identify the IUs and allocation for each IU. All IUs shall be duly notified by the agency. On the basis of said notice, the respective heads of the IUs concerned and as procuring entities, shall use as basis the allocation provided by the mother agency.
- 5.4 Consistent with DBM Circular Letter No. 2004-12, prior to the procurement of multi-year contracts for MYPs, the procuring agency should first secure a **MYOA** from DBM. This pre-requisite shall ensure that funding of the procurement activities of such MYP is within the total project cost and categories (e.g. civil work, vehicles, equipment, materials, consultancy, training, operation and maintenance, taxes, loan charges, contingencies and others) reflected in the MYOA. Consistent with the amended DBM Circular on the issuance of MYOA, the MYOA to be issued shall be supported with the Project Evaluation Report (PER) of the Investment Coordination Committee - Technical Board (ICC-TB). Upon approval of the projects by the ICC Cabinet Committee/NEDA Board, the same shall be forwarded by the agency concerned to DBM for reference.

5.5 Even without receipt yet of the allotments issued by DBM, the procuring agency shall proceed in conducting the procurement processes, starting from procurement planning **up** to the conduct of the bidding, cited under items **5.1.1 to 5.1.8** of this Circular.

5.6 Consistent with Section 47, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, no contract involving the expenditure of public funds shall be entered into unless the proper accounting official of the procuring entity shall have certified as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

5.7 The issuance of the notice of award of contract, cited under item **5.1.9** of this Circular, regardless of whether the procurement is to be conducted through competitive bidding or any of the alternative methods of procurement, shall **only be made** under the following instances:

5.7.1 Upon receipt of the SARO or ABM for the full cost of the project. Pending receipt of the approved ABM (for specifically appropriated items under the agency budget), the agency concerned is authorized to incur overdraft in obligation for this purpose which may be charged against the allotment to be comprehensively released. Upon receipt of the ABM, the agency shall immediately effect the necessary adjustment of said authorized overdraft in obligations in the appropriate Registry.

5.7.2 Upon receipt of actual cash transfer for GOCCs/LGUs.

It is understood that prior to the awarding of contract, the budget office of the procuring agency has prepared the Obligation Request as basis of the accounting unit in certifying that funds are available.

5.8 The notice of award of contract shall be issued within the bid validity period. Should it become necessary to extend the validity of bids and, if applicable, the bid securities, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.

5.9 Pursuant to Section 41 of the IRR of R.A. 9184, the procuring entity reserves the right to declare a failure of bidding if the funds/allotments for the program/project/activity have been withheld or reduced through no fault of the procuring entity. For transparency, procuring entities shall ensure that their bid documents expressly include a reservation clause on their right to 1) reject bids, 2) declare a failure of bidding, and 3) not to award the contract without incurring any liability if the funds/allotments for said program/project/activity have been withheld or reduced through no fault of its own. They are also encouraged to emphasize this reservation clause during pre-bid conference or submission of bids.

6.0 This Circular shall take effect immediately.

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FLORENCIO B. ABAD
Secretary