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Pasig City, Philippines 1605

CIRCULAR 01-2020

6 April 2020

TO : All Procuring Entities

SUBJECT : Guidelines for Emergency Procurement under Republic Act No. 11469 or the *Bayanihan* to Heal as One Act

1. OBJECTIVE

This Circular is formulated to expedite the procurement of highly needed supplies, materials, equipment, utilities, telecommunications, and other critical services authorized under Republic Act (RA) No. 11469 or the *Bayanihan* to Heal as One Act (*Bayanihan* Act) at the most advantageous price to the government with the necessary safeguards for the prevention of abuses and corruption in the procurement process.

2. SCOPE AND APPLICATION

This Circular shall apply:

- 2.1 to all Procuring Entities (PEs) or to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the Government of the Philippines, National Government Agencies, including Government-Owned and/or Controlled Corporations, Government Financing Institutions, State Universities and Colleges, and Local Government Units procuring Goods,¹ Infrastructure Projects² and Consulting Services;³ and
- 2.2 for the procurement of the following, in order to mitigate, if not contain, the transmission of Coronavirus Disease 2019 (COVID-19), immediately mobilize assistance in the provision of basic necessities to families and individuals affected by the imposition of Community Quarantine, especially indigents and their families, undertake measures that will prevent the overburdening of the healthcare system, immediately and amply provide healthcare, including medical tests and treatments

¹ Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services as defined in Section 5(h) of RA No. 9184.

² Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government as defined in Section 5(k) of RA No. 9184.

³ Refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies as defined in Section 5(f) of RA No. 9184.

to COVID-19 patients, persons under investigation, or persons under monitoring and undertake a program for recovery and rehabilitation, including a social amelioration program and provision of safety nets to all affected sectors:

- a. Goods, which may include personal protective equipment such as gloves, gowns, masks, goggles, face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension); testing kits; and such other supplies or equipment as may be determined by the Department of Health and other relevant government agencies;
- b. Goods and services for social amelioration measures in favor of affected communities;
- c. Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities;
- d. Establishment, construction, and operation of temporary medical facilities;
- e. Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and
- f. Ancillary services related to the foregoing.

3. PROCEDURE

PEs are guided by the following in the conduct of Emergency Procurement under the *Bayanihan Act*:

3.1. PEs shall prepare the project requirements, with the following details:

- a. Project Name;
- b. Approved Budget for the Contract (ABC);
- c. Technical Specifications, Scope of Work, or Terms of Reference;
- d. Date of Delivery or Implementation;
- e. Required quantity; and
- f. Other relevant information that the PE may require.

There is no required form to be used in the preparation of the project requirements. PEs shall formulate their project requirements and contract packaging based on their needs and the capability of suppliers as determined through initial market scanning or scoping. Procuring from several sources, if no one supplier is able to provide the required quantity, shall not be considered as splitting of contracts. Suppliers as used in this Circular may likewise refer to a distributor, manufacturer, contractor, or consultant.

3.2. Once the budget for the Procurement Project⁴ has been validated by the budget officer or equivalent position, the Procurement Project shall be included in the Annual

⁴ As defined under GPPB Circular No. 06-2019 dated 17 July 2019, a Procurement Project shall refer to a specific or identified procurement covering goods, infrastructure project or consulting services. A Procurement Project shall be described, detailed, and scheduled in the Project Procurement Management Plan prepared by the agency which shall be consolidated in the

Procurement Plan (APP) approved by the head of the procuring entity (HoPE) or his or her delegate. The HoPE is encouraged to delegate his/her authority and responsibility to efficiently and expeditiously deal with the emergency sought to be addressed under the RA No. 11469.

The procurement modality to be reflected in the APP for procurements to be undertaken under this Circular shall be Emergency Procurement under the *Bayanihan Act*.

However, in view of the urgent necessity of the procurement covered under the *Bayanihan Act*, the PE may commence with the procurement even without an approved APP, provided there is a document or certification from the budget officer or equivalent position showing that there is a budget for the purpose. The APP shall be approved thereafter and posted on the PE's website and submitted to the Government Procurement Policy Board (GPPB) or posted on the GPPB online portal for Emergency Procurement under the *Bayanihan Act*, once operational, on or before 30 September 2020.

- 3.3. PEs shall then directly negotiate or procure from a legally, technically, and financially capable supplier, distributor, manufacturer, contractor, or consultant.

The HoPE is encouraged to delegate the authority to directly negotiate or conduct the procurement activities to the End-user unit or any other appropriate bureau, committee, support or procuring unit. If no delegation is made, the Bid and Awards Committee (BAC) shall be the one to undertake the negotiation or procurement.

During negotiations, a formal written offer or bid may be submitted but is not required. Verbal agreement on the price and compliance or commitment to comply with the legal, technical and financial requirements of the Procurement Project shall be sufficient basis to recommend award of contract to the supplier, distributor, manufacturer, contractor, or consultant.

A legally, technically, and financially capable supplier, distributor, manufacturer, contractor, or consultant is one that meets the requirements provided in Item 3.4 of this Circular.

- 3.4. The BAC or End-user unit or any other appropriate bureau, committee, support or procuring unit duly authorized by the HoPE, shall immediately recommend award of contract to one that has the legal, technical, and financial capability to undertake the procurement at hand, to wit:
- a. submitted the mandatory documentary requirements under Item 4.1 of this Circular or if said documents were to be submitted after award of contract, has committed to comply with the same in the Omnibus Sworn Statement (OSS), with the stipulations provided in Appendix 1 for the OSS form for Emergency Procurement under the *Bayanihan Act*;
 - b. complied with the technical specifications, scope of work or terms of reference set by the PEs, and other documents supporting the same, including appropriate licenses and permits required by law or rules, or if said documents were required to be submitted after award of contract, has committed to comply with the same in the OSS; and
 - c. submitted any financial requirements of the project such as the Net Financial Contracting Capacity (NFCC), in case of Infrastructure Projects, or if said

documents were required to be submitted after award of contract, has committed to comply with the same in the OSS.

For foreign suppliers, the equivalent document in their jurisdiction would suffice consistent with Section 23.2 of the 2016 revised Implementing Rules and Regulations of RA No. 9184.

- 3.5. The HoPE, upon recommendation of the BAC or duly authorized End-user unit or any other appropriate bureau, committee, support or procuring unit, shall immediately award the contract to a legally, technically, and financially capable supplier, distributor, manufacturer, contractor, or consultant.

However, the HoPE reserves the right not to award the contract if the same will not redound to the benefit of the government such as:

- a. if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE;
- b. if the project is no longer necessary as determined by the HoPE; or
- c. if the source of funds for the project has been withheld or reduced through no fault of the PE.

The HoPE is encouraged to delegate the authority to award the contract to any official of the PE, except to those where there exists conflict of interest such as the BAC Chairperson and members or the person authorized to negotiate the bidding.

Upon award, the supplier shall enter into contract with the PE. The HoPE or his duly authorized representative shall immediately sign the contract or purchase order, provided that all the documents required to be submitted prior to award of contract are complied with and that the OSS has been submitted.

The contract shall include a warranty clause where the supplier, distributor, manufacturer, or contractor warrants that, for the period stipulated covering the procurement at hand, the Goods or Infrastructure Projects to be delivered or implemented shall be free from defects and conform to quality standards and technical specifications of the said contract. The contract awardee shall fulfill all the obligations and undertakings under the contract and the OSS.

- 3.6. The BAC, through its Secretariat, shall post for information purposes the Notice of Award (NOA), contract, or purchase order in (i) the website of the PE or if none, any conspicuous place in the premises of the PE; and (ii) the GPPB online portal for Emergency Procurement under the *Bayanihan* Act, once it becomes operational.
- 3.7. PEs shall be accountable for: (i) monitoring performance and compliance by the supplier, distributor, manufacturer, contractor, or consultant with all the obligations and undertakings in the contract, and (ii) imposing sanctions for non-performance by the supplier, distributor, manufacturer, contractor, or consultant which may include adherence to an improvement plan or any other remedial measures.

4. DOCUMENTARY REQUIREMENTS

- 4.1. PEs already maintaining a bidder's updated file of any of the following requirements, whether through the Philippine Government Electronic Procurement

System Certificate of Registration and Membership or its own records, shall not require its re-submission.

Otherwise, PEs shall require copies of:

- a. Mayor's or Business Permit;

For projects with an ABC above PhP500,000.00:

- b. Income Tax Returns (Annual Income Tax Return of the preceding tax year) OR Business Tax Returns (Value Added Tax or Percentage Tax Return covering the previous six months);
- c. OSS, which shall be an original copy;

Additional requirements for Infrastructure Projects:

- d. Philippine Contractors Accreditation Board License; and
- e. NFCC for Infrastructure Projects with an ABC above PhP500,000.00.

- 4.2. Bidders may submit their documentary requirements in printed copies or by electronic mail or facsimile. Any and all documentary requirements, except the OSS, shall be submitted at any time before award of contract or after award but before payment.
- 4.3. The OSS shall be submitted at any time before award of contract. An unnotarized OSS may be accepted by the PE subject to compliance therewith after award of contract but before payment.
- 4.4. The PE is allowed to accept a copy of the recently expired Mayor's or Business Permit and the Official Receipt as proof of application and payment for the renewal of the permit will suffice, subject to submission of the Mayor's Permit after award of contract.
- 4.5. The use of digital signature or similar means may be used in all procurement-related documents.

5. PRICE NEGOTIATION

PEs shall negotiate for the most advantageous price to the government based on:

- a. existing price data of the agency, the Department of Trade and Industry or other relevant agencies; or
- b. preliminary market scanning done by the agency showing prevailing market prices and practice.

6. DIRECT PURCHASE FROM LOCAL FARMERS

- 6.1. To ensure the availability of food for all affected sectors, PEs are encouraged to directly purchase agricultural products from local farmers or farmers' associations or cooperatives. Procurement from farmers' associations or cooperatives shall follow the procedure and requirements above-stated.

- 6.2. For direct negotiation with local farmers, the submission of any of the following at any time before award or after award but before payment shall be sufficient:
- a. a certification that the farmer is in the Registry System for Basic Sectors in Agriculture (RSBSA);
 - b. RSBSA identification card; or
 - c. Barangay Certification that the supplier is a bonafide farmer.
- 6.3. PEs shall be guided by the following in the negotiation of prices for agricultural products:
- a. the average prevailing farmgate price for the province, if purchased directly from the farmers;
 - b. the market price, if purchased from farmers' association or cooperative; or
 - c. the recommended retail price by the local price coordinating council for commodities sold by capable farmers, and farmers' associations or cooperatives in their respective provinces, municipalities and cities.
- 6.4 The farmer shall sign the disbursement voucher prepared by the PE to show actual delivery and receipt of payment. This shall likewise serve as the delivery invoice showing the quantity, description of the articles, unit and total value of the items delivered.

7. ADVANCE PAYMENT

- 7.1 To facilitate contract implementation of Procurement Projects under this Circular, advance payment for mobilization cost not exceeding fifteen percent (15%) of the contract amount shall be allowed pursuant to Memorandum Order (MO) No. 172, s. 2005, subject to any increase that may be approved by the President pursuant to Section 88 of Presidential Decree No. 1445 or the "Government Auditing Code of the Philippines".
- 7.2 A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a PE for services where requirement of down payment is a standard industry practice such as in the lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities pursuant to MO Order No. 172, s. 2005.

8. SPECIAL REPEAT ORDER

- 8.1 Considering the urgent necessity of the items to be procured under this Circular as well as the difficulty in estimating the required quantity needed for such, and the available funding at that time of the original purchase, a Special Repeat Order may be availed by the PE provided all of the following conditions are present:
- a. limited to Goods to be procured under this Circular;
 - b. the Goods were procured under a contract previously awarded through any mode of procurement, provided that the NOA was issued within the last six (6) months;
 - c. unit prices must be the same as or lower than those in the original contract. In the case of same unit price, the PE must ensure that there is no lower price available in the market;

- d. there has been a partial delivery, inspection and acceptance of the goods under a contract previously awarded; and
- e. the total amount shall not exceed one hundred percent (100%) of the original contract.

8.2 Upon determination of the need to re-order the goods earlier procured, the BAC or End-user unit or any other appropriate bureau, committee, support or procuring unit duly authorized by the HoPE shall directly negotiate for the procurement of additional goods, after a careful study and confirmation of the prevailing market price of the Goods to be reordered and comparing this with the price of the Goods in the original contract.

8.3 When all the conditions are present, the HoPE, upon recommendation of the BAC or duly authorized End-user unit or any other appropriate bureau, committee, support or procuring unit, shall issue the NOA which shall include a statement that the award is a Special Repeat Order. Thereafter, the supplier, distributor or manufacturer shall enter into contract with the PE.

8.4 No advance payment shall be allowed for a Special Repeat Order.

9. GPPB ONLINE PORTAL FOR EMERGENCY PROCUREMENT UNDER THE BAYANIHAN ACT

An online GPPB portal shall be established to promote accountability and transparency in the conduct of Emergency Procurement under the *Bayanihan Act*.

The PEs shall post in the GPPB online portal for information purposes the updated APP, NOA, and other information relative to the Procurement Projects undertaken pursuant to this Circular. This online portal shall be the source of data or information which shall be used by the GPPB and its Technical Support Office to comply with the reportorial requirements under the *Bayanihan Act*.

10. ADMINISTRATIVE AND CRIMINAL PENALTIES

PEs are authorized to impose the following penalties for the corresponding violations:

10.1. Failure of the supplier, distributor, manufacturer, contractor, or consultant to faithfully perform or deliver its obligations and undertakings under its contract, including compliance with the warranty clause and duly executed OSS shall be meted with the following sanctions:

- a. Blacklisting for a period of two (2) years in all government procurement activities following the provisions under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants;⁵
- b. In case advance payment was made or given, failure to perform or deliver any of the obligations and undertakings in the contract shall be sufficient grounds to constitute criminal liability for Swindling (*Estafa*) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to

⁵ Issued through GPPB Resolution No. 40-2017 dated 21 December 2017.

the prejudice of the public and the government of the Philippines pursuant to Article 315 of Act No. 3815 s. 1930, as amended, or the Revised Penal Code;

10.2 Delay in the completion or delivery of the Procurement Project through fault of the supplier, distributor, manufacturer, contractor, or consultant shall result in the imposition of liquidated damages, which is equivalent to at least one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the PE may cancel the contract. Should the PE decide not to cancel the contract, the same is without prejudice to the continued imposition of liquidated damages; and

10.3 Refusal to prioritize and accept contracts for materials and services necessary to promote the declared national policy under the *Bayanihan Act* shall be punishable with imprisonment of two (2) months or a fine of not less than Ten Thousand Pesos (PhP10,000.00) but not more than One Million Pesos (PhP1,000,000.00), or both, such imprisonment and fine, at the discretion of the court.

Notwithstanding the above penalties, the PE may impose other fines or penalties under other relevant laws, rules and regulations, or as agreed by the parties in the contract.

11. EFFECTIVITY

PEs which issued a NOA during the effectivity of this Circular may proceed with their contract implementation even after said effectivity. After the lapse of the effectivity of this Circular, no NOA shall be issued.

This Circular shall take effect immediately and shall be in full force and effect only for three (3) months from 25 March 2020 or the effectivity of the *Bayanihan Act*.

(SGD)
WENDEL E. AVISADO
Chairperson
Government Procurement Policy Board

**Omnibus Sworn Statement
For Emergency Procurement under Republic Act No. 11469
otherwise known as the “Bayanihan to Heal as One Act”**

REPUBLIC OF THE PHILIPPINES)
CITY/MUNICIPALITY OF _____) S.S.

A F F I D A V I T

I, [Name of Affiant], of legal age, [Civil Status], [Nationality], and residing at [Address of Affiant], after having been duly sworn in accordance with law, do hereby depose and state that:

1. Select one, delete the other:

If a sole proprietor: I am the sole proprietor of [Name of Bidder] with office address at [address of Bidder];

If a partnership, corporation, cooperative, joint venture or authorized representative of sole proprietor: I am the duly authorized and designated representative of [Name of Bidder] with office address at [address of Bidder];

2. Select one, delete the other:

If owner of sole proprietorship: As the owner and sole proprietor of [Name of Bidder], I have full power and authority to do, execute and perform any and all acts necessary to represent it in the bidding for [Name of the Project] of the [Name of the Procuring Entity];

If a partnership, corporation, cooperative, joint venture or authorized representative of sole proprietor: I am granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the [Name of Bidder] in the bidding as shown in the attached [state title of attached document showing proof of authorization (e.g., notarized Special Power of Attorney, notarized Secretary’s Certificate issued by the corporation or the members of the joint venture)];

3. [Name of Bidder] is not “blacklisted” or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;

4. [Name of Bidder] commits to submit all the mandatory documentary requirements in Item 4.1 of the Guidelines for the Procurement Activities under RA No. 11469 or the Bayanihan to Heal as One Act at anytime before award of contract or after award but prior to payment of contract but before payment;

5. [Name of Bidder] confirms that the posting of a performance security has been dispensed with due to the urgent need for the procurement covered by Republic Act (RA) No. 11469 or the Bayanihan to Heal as One Act. In lieu thereof, [Name of Bidder] hereby commits to perform and deliver all of the obligations and undertakings, including the warranty provisions under the contract covering the procurement at hand. [Name of Bidder] further agrees and accepts that failure to perform or deliver any of such obligations and undertakings shall result in Blacklisting of [Name of Bidder] for two (2) years in all government procurement activities following the procedure under the Guidelines for the Procurement Activities under RA No. 11469 or the Bayanihan to Heal as One Act. Moreover, in case advance payment was made or given, failure to perform or deliver any of said obligations and undertakings shall be sufficient grounds to constitute criminal liability for Swindling (*Estafa*) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of Act No. 3815 s. 1930, as amended, or the Revised Penal Code;

6. *[Name of Bidder]* warrants for a period stipulated in the contract covering the procurement at hand that the Goods or Infrastructure projects to be delivered shall be free from defects and conform with quality standards and technical specifications of the said contract;
7. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
8. *[Name of Bidder]* is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;
9. **Select one, delete the rest:**

If a sole proprietorship: I am not related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

If a partnership or cooperative: None of the officers and members of *[Name of Bidder]* is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

If a corporation or joint venture: None of the officers, directors, and controlling stockholders of *[Name of Bidder]* is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;

10. *[Name of Bidder]* complies with existing labor laws and standards;
11. *[Name of Bidder]* is aware of and has undertaken the following responsibilities as a Bidder:
 - a) Carefully examine all of the Procurement/Bidding Documents;
 - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
 - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
 - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the *[Name of the Project]*; and
12. *[Name of Bidder]* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this ___day of _____, 2020 at _____, Philippines.

[Bidder's Representative/Authorized Signatory]

[JURAT]