



Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

CIRCULAR 04-2016

20 December 2016

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 : Clarification on Negotiated Procurement under Emergency Cases modality embodied in Section 53.2 of the 2016 Revised Implementing Rules and Regulations of (IRR) of Republic Act (RA) No. 9184

1.0 Purpose

This Circular is being issued to explain the provisions on Negotiated Procurement under Emergency Cases modality embodied in Section 53(b) of Republic Act (RA) No. 9184 and Section 53.2 of its 2016 Revised Implementing Rules and Regulations (IRR).

2.0 Coverage

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 Emergency Cases Modality

3.1 Section 53(b) of RA 9184 and Section 53.2 of its 2016 Revised IRR provide that Negotiated Procurement may be resorted to by procuring entities in case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where 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.

3.2 Thus, Negotiated Procurement under Emergency Cases modality may be resorted to in the following instances:

3.2.1 in case of imminent danger to life or property during a state of calamity;

3.2.2 when time is of the essence arising from natural or man-made calamities; or

- 3.2.3 other causes where 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.
- 3.3 In all instances of Negotiated Procurement under Emergency Cases modality the Head of the Procuring Entity (HoPE) shall confirm in writing the existence and veracity of the ground or grounds relied upon before approving the ensuing contract.
- 3.4 Considering that the underlying reason to support a Negotiated Procurement through the Emergency modality relates to “time element” as when there is – a) imminent danger to life or property; or, b) when time is of the essence; or, c) immediate action is necessary, the Procuring Entity, through the HOPE, Bids and Awards Committee, its Secretariat and End-User unit, should consider appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed, such that when the reason or cause for the emergency has already been abated, adoption of competitive bidding as the primary mode of procurement should be considered.
- 3.5 When the ground is based on imminent danger to life during a state of calamity, there must be a declaration by a competent authority of a state of calamity pursuant to existing laws, rules and regulations before any procurement activity may be undertaken.

4.0 Conduct of Negotiated Procurement under Emergency Cases Modality

- 4.1 Annex “H” of the 2016 Revised IRR of RA 9184 or the *Consolidated Guidelines for the Alternative Methods of Procurement* provides for the rules, procedures, terms and conditions for the conduct of alternative methods of procurement, including the Negotiated Procurement under Emergency Cases Modality

Procedures

- 4.1.1 The End-User unit or the duly authorized official or personnel shall submit a request to the BAC or the HOPE, as the case may be, accompanied by appropriate supporting documents identifying the emergency sought to be addressed, and the necessary goods, civil works or consulting services (*e.g.*, Technical Specifications, Scope of Work or Terms of Reference) that have to be procured to address the emergency.
 - 4.1.2 Upon preparation of the appropriate procurement documents, the BAC may directly negotiate with a supplier, contractor or consultant with technical, legal and financial capability to deliver the goods, execute the works and perform the services to address the emergency. Upon confirmation and ascertainment of such capability to address the emergency, the HOPE, upon recommendation of the BAC, shall immediately award the contract to the Supplier, Contractor or Consultant.

Delegation of Authority

- 4.1.3 Due to the urgent nature of the attendant circumstances, the BAC and the HOPE through a Resolution and Office Order, respectively, may delegate to specific officials, personnel, committee or office in the Procuring Entity the conduct of procurement and award of contract to efficiently and expeditiously deal with the emergency sought to be addressed.

For record and monitoring purposes, all awards shall be immediately reported with all supporting documents to the HOPE, through the BAC, to ensure compliance with all the conditions and requirements provided for under RA 9184, its IRR and related guidelines.

Documentary Requirements

- 4.1.4 The prescribed documentary requirements for Negotiated Procurement under Emergency Cases modality may be submitted either: (1) upon submission of offer; (2) during evaluation of offer; (3) before issuance of Notice of Award; or (4) prior to payment. The Request for Quotation or Request for Proposal (RFQ/RFP) shall indicate, among others, the prescribed period for the submission of the documentary requirements.
- 4.1.5 Suppliers, contractors or consultants are required to submit Mayor's or Business Permit and an Omnibus Sworn Statement: *Provided*, That in the case of infrastructure projects, contractors shall likewise be required to submit PCAB License and Registration for the type and cost of the contract: *Provided further*, That if the ABC is more than Five Hundred Thousand Pesos (Php500,000.00), suppliers, contractors or consultants for Negotiated Procurement under Emergency Cases modality are also required to submit their Income/Business Tax Return, and the computation of the Net Financial Contracting Capacity in the case of infrastructure projects.

Posting Requirements

- 4.1.6 Posting and advertisement requirements, as prescribed in Section 21.2.1 of the 2016 Revised IRR of RA 9184 is dispensed with. However, the BAC, through its Secretariat, shall post the NOA, Contract/PO, including the NTP if necessary, for information purposes, in the PhilGEPS website, the website of the Procuring Entity concerned, if available, and at any conspicuous place reserved for this purpose in the premises of the Procuring Entity within ten (10) days from their issuance, except for contracts with ABC of Fifty Thousand Pesos (₱50,000.00) and below.

Bid, Performance and Warranty Securities

4.1.7 Submission of bid securities is dispensed with. On the other hand, procuring entities may require the performance and/or warranty securities depending on the nature of the procurement project: *Provided*, That in the procurement of infrastructure projects, performance security shall always be required: *Provided further*, That in no case shall warranty security be required in the procurement of consulting services.

4.2 RA 9184 and its 2016 Revised IRR already allow procuring entities to resort to alternative methods of procurement, particularly, Negotiated Procurement under Emergency Cases modality during state of calamity or emergency case in the procurement of emergency items, such as fuel requirements, by directly negotiating with a technically, legally and financially capable supplier, contractor or consultant, following the prescribed rules and procedures.

5.0 Executive Order (EO) No. 423, as amended by EO 645

GPPB approval for the use of alternative methods of procurement, including Negotiated Procurement under Emergency Cases modality, is only necessary if the contract involves an amount of at least Five Hundred Million Pesos (Php 500,000,000.00), in line with the provisions of Executive Order (EO) No. 423, series of 2003, as amended by EO 645, series of 2007.

6.0 This Circular shall take effect immediately.

7.0 For guidance and compliance.

(sgd.)

BENJAMIN E. DIOKNO

Chairperson