

CIRCULAR 09-2015

18 August 2015

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 : Guidelines Reiterating the Procedures to be Adopted in Undertaking Procurement Activities Prior to the Approval of the GAA or Receipt of Obligational Authorities Issued by DBM.

1.0 Purpose

This Circular is being issued to reiterate the procurement procedures a procuring entity may undertake prior to the approval of the General Appropriations Act (GAA) or receipt of the obligational authorities issued by Department of Budget and Management (DBM).

2.0 Coverage

- 2.1 All departments, bureaus, offices and agencies of the national government (NG) including state universities and colleges (SUCs).
- 2.2 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.

3.0 Definition of Terms

As used in this Circular, the following terms are defined, as follows:

- 3.1 *Annual Procurement Plan (APP)* - the requisite document that the procuring entity must prepare to reflect the entire procurement activity (*i.e.* goods, services, civil works to be procured) that it plans to undertake within the calendar year. This document contains the following information:
 - 3.4.1 Name of the procurement program/project;
 - 3.4.2 Project management office or end-user unit;
 - 3.4.3 General description of the procurement;
 - 3.4.4 Procurement method to be adopted;
 - 3.4.5 Time schedule for each procurement activity;
 - 3.4.6 Source of fund; and,
 - 3.4.7 Approved Budget for the Contract.

3.2 *Approved Budget for the Contract (ABC)* - refers to the following:

NGs including SUCs (referred to in Section 2.1)

3.2.1 For specifically appropriated items as reflected in the annual budget of the national government agency, the amount corresponding to either the full cost of a single year or multi-year program/activity/project (PAP). For multi-year PAPs, for which a Multi-Year Obligational Authority has been issued, the ABC shall be the amount reflected in the Multi-Year Obligational Authority.

3.2.2 For lump sum allocation of a department or agency, this corresponds to the allocation of the specific implementing unit as determined by the head of the department/agency.

GOCCs and LGUs (referred to in Section 2.2)

3.2.3 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 PAP.

3.3 *GAA-as-Budget-Release-Document* – The new mechanism, *i.e.* GAA as budget release document, means that the budgets of departments/agencies or “appropriation,” except for those categorized as “For Later Release” (FLR) or “negative list,” are considered released as allotments when the GAA takes effect. The items of expenditure that are included in the negative list are as follows:

- a) Lump-sum Funds within the agency budget, details of which have not been submitted prior to the effectivity of the GAA;
- b) Special Purpose Funds, including Budgetary Support to Government Corporations;
- c) Other items subject to compliance with the conditionalities/requirements specified under the General and/or Special Provisions and Budget Affirmation/Veto Message in the GAA; and
- d) All automatically appropriated items, including Special Accounts in the General Fund.

3.4 *Implementing Units (IUs)* - agencies or bureaus within a department of the national government, or a GOCC or LGU tasked to undertake a PAP.

3.5 *Lump-sum Appropriations and Centrally Managed Items (CMIs)* - those items in the budget of agencies for which the Implementing Units and the specific amounts allocated for each have not been identified in the NEP or the GAA.

3.6 *Multi-Year Projects (MYPs)* - refers to budgetary PAP which will take more than one (1) year to complete.

3.7 *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, obligates agencies to include in their budget proposal for the ensuing years the amount programmed for the said year(s).

- 3.8 *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 General Appropriations Act (GAA).
- 3.9 *Single Year Projects (SYPs)* - refers to PAP which have an implementation period of not more than a year.
- 3.10 *Special Allotment Release Order (SARO)* – Obligational authority that covers budgetary items under FLR (negative list) subject to compliance of required documents/clearances.

4.0 General Guidelines

- 4.1 Under Section 7.2 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (R.A) No. 9184, no procurement shall be undertaken unless it is in accordance with the approved APP of the procuring entity. The APP shall bear the approval of the Head of the Procuring Entity (HOPE) or second-ranking official designated by the HOPE to act on his behalf, and must be consistent with its duly approved yearly budget.
- 4.2 As a general rule, all procurements should be within the approved budget of the procuring entity. However, consistent with DBM Circular Letter No. 2010-09, to facilitate the immediate implementation of projects even pending approval of the GAA, procuring entities may commence the conduct of procurement activities, short of award, identified in its APP for a specific budget year even before the GAA is approved, where the ABC shall be based on the budget levels under the NEP submitted to Congress.
 - 4.2.1 For line item projects with specific appropriations, including MYPs, the agencies can proceed with the procurement activities using as basis the NEP figures.
 - 4.2.2 For lump-sum appropriations or Centrally Managed Items (CMIs) under the agency's budget, the head of the agency shall identify the Implementing Units (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.
- 4.3 For Multi-Year Projects, 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 cost and categories reflected in the MYOA.

- 4.4 The DBM, through the issuance of National Budget Circular (NBC) No. 551, institutionalized the use of the annual GAA as a budget release document, and modified the fund release documents (obligational authorities), *e.g.* Special Allotment Release Order (SARO), for agencies to incur obligations.
- 4.5 Even prior to the approval of the relevant GAA or before the receipt of the obligational authorities issued by DBM for certain budget items, the procuring entity may proceed with the procurement process, starting from planning up to the conduct of actual procurement processes and procedures, short of award.
- 4.6 As prescribed under 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.
- 4.7 The notice of award, 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:
 - 4.7.1 Upon approval of the relevant GAA or, if applicable, receipt of the obligational authorities issued by DBM for the full cost of the project; and
 - 4.7.2 Upon receipt of actual cash transfer for GOCCs/LGUs.
- 4.8 The notice of award shall also be made 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.
- 4.8 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/allotment for the PAP has 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/allotment for said PAP has 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.

- 5.0 The provisions of GPPB Circulars 02-2008 dated 1 August 2008 and 01-2009 dated 20 January 2009 which are inconsistent with any of the provisions of this Circular are hereby revoked or modified accordingly.
- 6.0 This Circular shall take effect immediately.
- 7.0 For guidance and compliance.

(SGD)

FLORENCIO B. ABAD
Chairperson