

NPM No. 073-2017

21 December 2017

MS. TERESA TUERES

Property Officer

PHILIPPINE CENTER FOR ECONOMIC DEVELOPMENT (PCED)

teresatueres@pced.gov.ph

Re: Negotiated Procurement (Emergency Cases)

Dear Ms. Tueres:

This refers to your electronic mail (e-mail) inquiring whether PCED may opt to use alternative methods of procurement under Annex "H" of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act, given that the situation is an emergency and that the repairs are needed as soon as possible (ASAP) to prevent loss or damage to life and property.

It is represented that the PCED building has leaks due to damaged gutters, which needs to be replaced ASAP because the water leaking from the roof deck are slowly seeping through the electrical conduits, which may cause short circuit or fire and is unsafe for the people occupying the building. For this reason, PCED is considering resorting to an alternative method of procurement to address the emergency. Hence, this query.

At the outset, we wish to clarify that the determination of the appropriate procurement method to be used for a particular project rests within the authority and accountability of the Head of the Procuring Entity (HOPE), as the approving authority, and the Bids and Awards Committee (BAC), as the recommendatory body.¹ We adhere to the position that no other agency, office or official may interfere with these functions of the HOPE and the BAC and dictate the appropriate procurement method to be used for a particular project. Guided by the provisions of RA 9184 and its 2016 IRR, the Procuring Entity (PE), through the HOPE and the BAC, is in the best position to determine the appropriate method of procurement for all its projects taking into consideration all the surrounding circumstances for each procurement project.

Section 10 of RA 9184 mandates that all procurement shall be done through competitive bidding, except as provided for in Article XVI thereof, which enumerates the allowable alternative methods of procurement. Alternative methods of procurement may be resorted to only upon prior approval of the HOPE, in order to promote economy and efficiency, and whenever justified by the conditions for each alternative method of procurement specified in Sections 49 to 53 of the IRR of RA 9184.² This is consistent with the pronouncement of the Supreme Court that competitive bidding may not be dispensed with

¹ Section 12.1 of the IRR of RA 9184 in relation to Section 48.1 of the IRR of RA 9184.

² Section 48.1 of the IRR of RA 9184.

nor circumvented, and that alternative methods of procurement may only be resorted to in the instances provided for by law.³

Accordingly, if PCED is considering resorting to Negotiated Procurement (*Emergency Cases*), or any other alternative method of procurement for that purpose, it is incumbent upon PCED to justify the presence of any of the conditions warranting its use. It is necessary to assess, evaluate, and determine that the grounds and causes adverted to, justifying the use of any of the alternative modality, such as Negotiated Procurement through *Emergency Cases*, are truly existing and the harm or danger or loss sought to be prevented are real and not merely based on speculation, surmise or weak probability,⁴ witness our view in NPM No. 95-2012, thus:

[T]he emergency situation conceived must be real and not merely based on assumptions, surmises, or weak probabilities. Moreover, procuring entities must not in any way, directly or indirectly, cause or contribute to the emergency situation sought to be addressed.”

To reiterate, the determination and accountability for the use of such modality, and the conditions and circumstances upon which these are based rest primarily with the HOPE or its delegated authority, upon prior recommendation of the BAC.⁵

All told, it is our considered view that the PE, through the HOPE and the BAC, is in the best position to determine and verify, after careful and meaningful assessment, the existence of the conditions warranting the use of alternative methods of procurement, i.e. Negotiated Procurement under the *Emergency Cases* modality. PCED must make a determination that the emergency situation is real and PCED did not in any way, directly or indirectly, cause or contribute to the emergency situation sought to be addressed.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

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³ *Manila International Airport Authority, et al v. Olongapo Maintenance Services Inc., et al; Antonio P. Gana, et al. v. Triple Crown, etc.; Triple Crown etc. v. Manila International Airport Authority, et al.*, G.R. Nos. 146184-85/ G.R. No. 161117/ G.R. No. 167827, January 31, 2008.

⁴ NPM No. 95-2012 dated 8 August 2012.

⁵ NPM No. 33-2015, dated 8 October 2015.