

NPM No. 101-2017

29 December 2017

MR. ROEL M. ROSALES

Chairperson, Bids and Awards Committee

Deputy Administrator, Operations Branch

PHILIPPINE COCONUT AUTHORITY

Elliptical Road, Diliman, Quezon City

**Re: Procurement of Consulting Services under
Section 53.2 Negotiated Procurement (Emergency Case) -**

Dear Deputy Administrator Rosales:

This refers to your letter inquiring whether the hiring of consultants maybe done through negotiated procurement under an emergency case.

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, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (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.

Under RA 9184 and its 2016 IRR², all procurement shall be done through competitive bidding, except as provided in Rule XVI of the law and the IRR. Accordingly, 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 9184.³ This is consistent with the pronouncement of the Supreme Court that competitive bidding may not be dispensed with nor circumvented, and that alternative methods of procurement may only be resorted to in the instances provided for by law.⁴

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

² 2016 Revised Implementing Rules and Regulations published on 09 August 2016 and took effect on 28 October 2016

³ Section 48.1 of the IRR of RA 9184.

⁴ *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.

Negotiated Procurement under Section 53.2 (Emergency Cases), may be undertaken when any of following conditions is present, thus:

- i. In case of imminent danger to life or property during a state of calamity;
- ii. When time is of the essence arising from natural or man-made calamities; or
- iii. Other causes where immediate action is necessary:
 - a) To prevent damage to or loss of life or property, or
 - b) To restore vital public services, infrastructure facilities and other public utilities.

The BAC must justify why resort to Negotiated Procurement under Emergency Cases is warranted citing the applicable condition applicable. Upon determination, the BAC shall recommend to the HOPE that resort to Negotiated Procurement under Emergency Case is most advantageous to the Government and upon approval of the latter, the Procuring Entity may negotiate and enter into a contract subject to the procedures provided in Annex "H", *Consolidated Guidelines for the Alternative Methods of Procurement* (Guidelines), of the 2016 IRR of RA No. 9184.

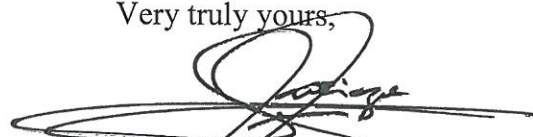
Thus, Section V.D.2(a) of the Guidelines provides, in part, that:

In all instances where Negotiated Procurement under Emergency Case is to be resorted, the HoPE shall confirm in writing the existence and veracity of the ground or grounds relied upon before approving the ensuing contract. 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, BAC, 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 shall be considered.

From the foregoing, procurement of consulting services, as a general rule, shall be conducted through competitive bidding and resort to Negotiated Procurement (Emergency Cases) is allowed only in highly exceptional cases, and based on whether or not the conditions provided in Section 53.2 are present.

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 V