



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 06-2014

11 March 2014


ATTY. DIANE SHAYNE D. LIPANA
Technical Assistant
OFFICE OF THE EXECUTIVE SECRETARY
STRATEGIC INITIATIVES MANAGEMENT OFFICE (OES-SIMO)
231 Mabini Hall, Malacanang,
Manila

Re: GPPB Resolution No. 34-2013 dated 17 December 2013

Dear Atty. Lipana:

This is in response to your electronic mail dated 7 January 2014, seeking clarification whether the Government Procurement Policy Board (GPPB) Resolution No. 34-2013 dated 14 November 2013, includes in its coverage the request of the Department of Public Works and Highways (DPWH) Secretary, Honorable Rogelio L. Singson, authorizing the DPWH Secretary to conduct Negotiated Procurement under Section 53 of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR), without securing the opinion of the GPPB and approval from the National Economic and Development Authority (NEDA) Director-General, pursuant to the requirements under Executive Order (EO) No. 423, S. 2005.

Per your representation, the above-mentioned request was transmitted to OES-SIMO through a Memorandum from the DPWH Secretary dated 17 December 2013, in connection with the contracts for the proposed construction of resettlement houses in the areas affected by Typhoon Yolanda. Based on your initial assessment, you observed that GPPB Resolution No. 34-2013 could already address DPWH's request inasmuch as the said resolution grants "authority to all concerned government procurement entities to procure goods for, and to continue to provide basic services to victims in areas affected by Typhoon Yolanda, through Negotiated Procurement under Section 53.2 (Emergency Cases) of the IRR of RA 918 with an Approved Budget for the Contract (ABC) of at least Five Hundred Million Pesos (PhP500,000,000.00) for the duration of the State of National Calamity until lifted by the President pursuant to Proclamation No. 682, Series of 2013". It is in this context that you are seeking clarification on whether GPPB Resolution No. 34-2013, likewise covers the request of DPWH to warrant the issuance of an Executive Order on the matter.

EO No. 423, s. 2005, particularly Section 4 thereof, has been amended by EO No. 645, s. 2007. The amendment transferred the authority to approve from the NEDA Director-General to the GPPB. Accordingly, the present rule requires procuring entities that intend to use any of the alternative methods of procurement, with an ABC of at least Five Hundred Million Pesos, to obtain prior approval from the GPPB, specifically for the purpose of determining whether the undertaking falls within the exceptions for public bidding and that the proposed specific alternative modality is appropriate. Be that as it may, still, the Head of the Procuring Entity has the full authority to approve and enter into government contracts through any of the alternative methods of procurement if the ABC therefor is below PhP500 Million. 

Negotiated Procurement is only one of several alternative modalities that procuring entities may use in procuring government contracts. Section 53 of the IRR of RA 9184 provides specific instances or conditions when Negotiated Procurement may be resorted to, one of which is in case of an “emergency”. Under Section 53.2 of said IRR, Negotiated Procurement may be used “when there is 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.”

In order to expedite the procurement of goods and infrastructure projects for the purpose of providing rescue, recovery, relief, and/or rehabilitation efforts for, and to continue to provide basic services to victims in areas affected by Typhoon Yolanda, through Negotiated Procurement under Section 53.2 (Emergency Cases) of the IRR of RA 9184, with an ABC of at least Five Hundred Million Pesos, the GPPB issued GPPB Resolution No. 34-2013 allowing government procuring entities to proceed with its procurement under “emergency cases” without first obtaining prior approval from the GPPB as required in EO No. 423, s. 2005, thereby authorizing the immediate resort to the aforesaid alternative method of procurement during the effectivity of the State of National Calamity declared by the President pursuant to Proclamation No. 682, s. 2013.

It should be emphasized that the grant of authority in GPPB Resolution No. 34-2013 is limited to the use of Negotiated Procurement under Section 53.2 of the IRR of RA 9184. In this regard, we wish to clarify that procurement activities for contracts amounting to at least Five Hundred Million Pesos using alternative method of procurement other than Negotiated Procurement under Section 53.2 of RA 9184 and its IRR are still subject to the requirement for prior GPPB approval pursuant to Section 4 of EO No. 423, s. 2005, even if the purpose is to provide rescue, recovery, relief, and/or rehabilitation efforts for, or to continue to provide basic services to victims in areas affected by Typhoon Yolanda.

Notably, the request of the Honorable DPWH Secretary is for authority to use Section 53 of RA 9184 and its IRR. Without specifying the instance or condition for its use, we presume that the request is for authority to use Negotiated Procurement in any of the thirteen (13) instances provided in Sections 53.1 to 53.13 of the IRR of RA 9184. Based on this, we are of the considered view that GPPB Resolution No. 34-2013 does not fully cover the request of the Honorable DPWH Secretary considering that such resolution only applies to procurement activities using Negotiated Procurement under Section 53.2 (Emergency Cases) of RA 9184 and its associated IRR.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular 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

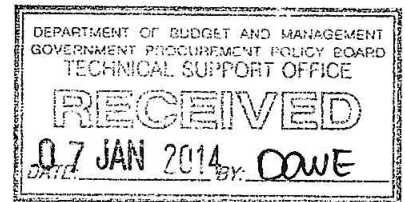
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4/22/14

GPPB

From: Diane Lipana <dianelipana@gmail.com>
Sent: Tuesday, January 07, 2014 12:22 AM
To: gppb@gppb.gov.ph; legal@gppb.gov.ph
Subject: DPWH Memorandum for the President Re Exception to EO 423 as amended by EO 465
Attachments: DPWH Memorandum for the President Re Exception to EO 423 as amended by EO 465.pdf

Atty. Dennis S. Santiago
 Executive Director
 Government Procurement Policy Board - Technical Support Office



Dear Sir,

As I have earlier discussed with Charity Osdon of your Legal Division, we have received a Memorandum from DPWH Secretary Singson, requesting for the issuance of an Executive Order authorizing DPWH Secretary to conduct negotiated procurement for the proposed contracts for the construction of resettlement houses in the areas affected by Typhoon Yolanda without securing an opinion from GPPB and the approval from the NEDA Director General as an exception to EO No. 423 (s. 2005), as amended by EO No. 645 (s.2007) *(Please see attached file for reference).*

However, we have been made aware that as early as 14 November 2013, GPPB issued Resolution No. 34-2013 which provides the "grant authority to all concerned government procuring entities to procure goods and infrastructure projects, for the purpose of providing rescue, recovery, relief, and/or rehabilitation efforts for, and to continue to provide basic services to victims in areas affected by Typhoon Yolanda, through Negotiated Procurement under Section 53.2 (Emergency Cases) of the IRR of RA 9184 with an Approved Budget for the Contract of at least Five Hundred Million Pesos (PhP500,000,000.00) for the duration of the State of National Calamity until lifted by the President pursuant to Proclamation No. 682, Series of 2013."

In our initial assessment, GPPB Resolution No. 34-2013 could already address the request of DPWH. Nevertheless, we note that DPWH sent its request, which was dated 17 December 2013, despite the earlier issuance of the above GPPB resolution, to which DPWH was a signatory to. Relative to these circumstances, we wish to request your guidance on the said matter. We would like request for a clarification if GPPB Resolution No. 34-2013 does not fully cover the request of DPWH to warrant an executive issuance on the matter.

We would highly appreciate receiving your inputs on the matter soonest.

Thank you very much.

Very truly yours,

Diane

*Diane / Riza,
 please prepare our reply,
 and submit the same draft to
 me by 119.
 TX. DSS*

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Atty. Diane Shayne D. Lipana
 Technical Assistant

Office of the Executive Secretary-

Strategic Initiatives Management Office (OES-SIMO)

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Memorandum for the President

DEC 17 2013

REQUEST FOR ISSUANCE OF EXECUTIVE ORDER TO AUTHORIZE THE DPWH SECRETARY TO CONDUCT NEGOTIATED PROCUREMENT PROVIDED IN SECTION 53 OF REPUBLIC ACT 9184 FOR THE PROPOSED CONTRACTS FOR THE CONSTRUCTION OF RESETTLEMENT HOUSES IN THE AREAS AFFECTED BY TYPHOON YOLANDA WITHOUT SECURING AN OPINION FROM THE GOVERNMENT PROCUREMENT POLICY BOARD (GPPB) AND APPROVAL FROM THE NEDA DIRECTOR GENERAL AS AN EXCEPTION TO SECTION 4 OF EXECUTIVE ORDER NO. 423, SERIES OF 2005, AS AMENDED BY EXECUTIVE ORDER NO. 645, SERIES OF 2007.

The contracts for the proposed construction of residential houses in areas affected by Typhoon Yolanda may cost Ph500 Million or more each contract package. To expedite the construction and completion of the proposed housing projects, the DPWH intends to procure the contract for the project through direct negotiation with contractors who have proven technical, legal and financial capabilities to implement the projects pursuant to Section 53 of Republic Act 9184 and Section 53, Rule XVI of its Revised Implementing Rules and Regulations.

The DPWH's intention to expedite the construction and completion of the proposed housing projects, however, may not be attained because of the legal constraints prescribed in Section 4 of Executive Order No. 645 dated July 31, 2007, which requires the Head of the Procuring Entity to obtain approval from the Government Procurement Policy Board that said government contracts fall within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate.

In view of the foregoing and as time is of the essence, we hereby request for issuance of an Executive Order authorizing the DPWH, through its Bids and Award Committee for Locally-Funded Projects, to conduct the negotiated procurement of the contracts for the proposed housing projects in areas affected by Typhoon Yolanda pursuant to Section 53 of Republic Act 9184 and Section 53, Rule XVI of its Revised Implementing Rules and Regulations without securing approval from the GPPB that the said negotiated procurement falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate, as an exception to Executive Order No. 423 dated April 30, 2005 as amended by Executive Order No. 645 dated July 31, 2007.

In addition, authority is also requested for the DPWH Secretary to approve said contracts for the proposed housing projects regardless of the contract amount as an exception to existing laws on the matter.


ROGELIO L. SINGSON
Secretary

Department of Public Works and Highways
Office of the Secretary



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