



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

NPM No. 31-2012

4 April 2012

MR. ESTELITO A. NIERVA
Chairman, Bids and Awards Committee (BAC)
PHILIPPINE NATIONAL RAILWAYS (PNR)
PNR Executive Building, Mayhaligue Street,
Tondo, Manila

Re: Negotiated Procurement (Emergency Cases)

Dear Mr. Nierva:

We respond to your letter dated 15 March 2012 requesting for clarification on whether the BAC can proceed to Negotiated Procurement (Emergency Cases) after a first failed bidding under Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, in connection with the rehabilitation of the Alabang to Calamba line, PNR called for a competitive bidding for the regirdering of five (5) steel superstructures at telegraphic post, and replacement of existing one rail cluster with I-beam and repair of abutments. However, the lone bidder that was initially declared eligible was later disqualified during the post-qualification process. Subsequently, the BAC of PNR received from its Engineering Department that further delay in the regirdering of the bridges can no longer be accommodated as it will pose serious threat to the safety of the trains and its passengers. Hence, instead of a rebidding, the BAC is now contemplating the adoption of the alternative method of procurement specifically Negotiated Procurement in Emergency Cases sanctioned under Section 53.2 of the IRR. This option will help prevent the need of PNR to suspend its train operations that will be detrimental to the riding public.

We wish to inform you that although the primary mode of procurement under RA 9184 and its IRR is competitive bidding, resort to any of the alternative modes of procurement under Rule XVI is allowed subject to the prior approval of the Head of the Procuring Entity (HOPE) and under highly exceptional circumstances as justified by the conditions to promote economy and efficiency.¹ For your guidance, the application of Negotiated Procurement in Emergency Cases contemplates the following instances:

1. In case of imminent danger to life or property during a state of calamity;
2. When time is of the essence arising from natural or man-made calamities;

¹ Section 48.1, Rule XVI of the IRR.

3. Other causes where immediate action is necessary to prevent damage to or loss of life or property; and
4. To restore vital public services, infrastructure facilities and other public utilities.

It bears stressing that prior approval of the GPPB on the propriety of using a particular alternative method of procurement is not required under RA 9184 and its IRR. The procuring entity need not wait for the occurrence of two failed biddings prior to entering into Negotiated Procurement under Emergency Cases if warranted by valid, lawful, reasonable and justifiable conditions and circumstances allowing the use of the proposed alternative modality that would be most advantageous to the procuring entity taking into consideration the principles of competition, economy and efficiency in public procurement.

Based on the foregoing, we are of the view that the HOPE and the BAC of the procuring entity are in the best position to verify the existence of the conditions and circumstances, and to validate the urgency of the situation in resorting to any of the alternative methods of procurement under RA 9184 and its IRR. However, in case the conditions and circumstances needed for alternative modes of procurement are not present, then a second public bidding should be resorted to in relation to the aforementioned infrastructure projects of PNR.

We hope our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III