



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 33-2015

8 October 2015

MR. ABRAHAM M. MENDOZA

Audit Team Leader

COMMISSION ON AUDIT (COA)

DEPARTMENT OF EDUCATION REGIONAL OFFICE I (DEPED-RO1)

San Fernando City, La Union, Philippines

Re: Negotiated Procurement (Emergency Cases)

Dear Mr. Mendoza:

This refers to your letter requesting for opinion whether negotiated procurement adopted by DepEd Division Offices (DOs) is allowed for projects funded from the Quick Response Fund (QRF) for Calendar Year (CY) 2012 onwards for the repair, rehabilitation, reconstruction or replacement of school buildings affected by fire and other calamities provided in DepEd Memorandum No. 104, S. 2011.

It is represented that on 3 February 2010, the DepEd issued Memorandum No. 40, S. 2010 which provides the guidelines for the implementation of the CY 2010 QRF 1st Batch. It was provided in the said Memorandum that the procurement and implementation of projects under QRF shall be conducted by the DOs whereby the Division Bids and Awards Committee (BAC) can adopt Negotiated Procurement following Sec. 53.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184. In 2011, the DepEd QRF Guidelines was updated through the issuance of DepEd Memorandum No. 104, S. 2011 on 27 April 2011. On the other hand, for CY 2012, some DOs in your region still resorted to negotiated procurement (emergency cases) as the procurement modality for QRF projects. Hence, this request for opinion.

While it is true that Section 10 of RA 9184 and its revised IRR mandate that all procurement shall be done through competitive bidding, use of alternative methods of procurement is acceptable under highly exceptional circumstances, subject to the approval of the Head of the Procuring Entity (HOPE) and whenever justified by conditions and circumstances that need to be addressed, taking into note economy and efficiency.

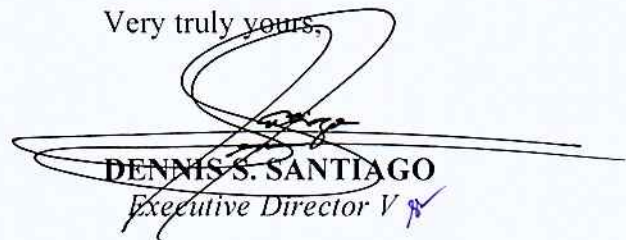
Negotiated Procurement under Section 53.2 of the revised IRR of RA 9814 is an alternative method of procurement which may be resorted to “[i]n case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes 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.”

From the foregoing, DepEd DOs may still use negotiated procurement (emergency cases) for projects for CY 2012 onwards under the QRF, provided that the conditions enumerated in Section 53.2 of the revised IRR are present. Accordingly, the DepEd DOs, in the resort to negotiated procurement (emergency cases), must establish the existence of emergency situation(s) described under Section 53.2 of the revised IRR, and likewise provide for valid and lawful justifications for their adoption and implementation.

It is worthy to emphasize, however, that “[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.” As such, the determination and accountability for the use of such modality, and the conditions and circumstances upon which these are based rest primarily with the head of the procuring entity (HOPE) or its delegated authority, upon prior recommendation of the Bids and Awards Committee (BAC).

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

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