



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 52-2015

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MR. PETER ANTHONY A. ABAYA
General Manager and CEO
PHILIPPINES RECLAMATION AUTHORITY
(PUBLIC ESTATES AUTHORITY)
7th Floor, Legaspi Towers 200 Bldg.
107 Paseo De Roxas Street,
Legaspi Village, Makati City

Re : Adjacent or Contiguous Infrastructure Projects

Dear GM Abaya:

This refers to your letter dated 7 July 2015, specifically requesting for clarification on the application of Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of the revised Implementing Rules and Regulations (IRR) of RA 9184.

As presented, the Philippine Reclamation Authority (PRA) is currently undertaking the Rotto-Milling and Asphalt Overlay at the President Diosdado Macapagal Boulevard (PDMB) South Bound Lane Project located at CBP-1, Islands B & C (Aseana Business Park), Paranaque City. The said project involves removal of the existing asphalt wearing course (upper layer of asphalt pavement) and replacement with fresh asphalt. However, in order to complete the project, there is a need to undertake additional works which consist of removal and replacement of lower layer of the asphalt pavement and other related works. You have estimated the cost for the additional works by adopting the same unit prices as that in the original contract.

The issue submitted to for our consideration is - whether the additional works of removing and replacing the lower layer of the asphalt pavement is considered an adjacent or contiguous project to the original contract, in order to rightfully fall within the coverage of Section 53.4 of the IRR of RA 9184.

Adjacent or Contiguous Projects

The phrase "adjacent or contiguous" refers to projects that are in actual physical contact with each other in the case of infrastructure projects. Thus, the physical connection of the two (2) projects should be actual and not superficial. The objective of this policy is to take the advantage of the economy and efficiency in engaging the contractor for the on-going project, and ensure that the two structures are soundly connected.¹

¹ NPM -095-2013, December 20, 2013

We understand that in order to complete the replacement of the upper layer of asphalt pavement with fresh asphalt, there is a need to remove the lower layer of the asphalt pavement. Given the said work interface, it is apparent that the lower layer of the asphalt pavement is physically connected with the upper layer of the original project in order to complete the said asphalt overlaying activity. Hence, the physical connection of the two (2) projects may fall within the ambit of the term "adjacent or contiguous" as provided for under Section 53.4 of the IRR of RA 9184.

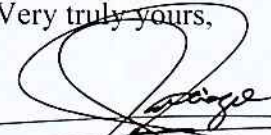
Notwithstanding the foregoing, please note that while the additional works of removing and replacing the lower layer of the asphalt pavement may be considered as an adjacent or contiguous works, resort to Negotiated Procurement under the Adjacent or Contiguous modality is not absolute. Section 53.4 of the IRR of RA 9184 requires that resort to Negotiated Procurement pursuant to the Adjacent or Contiguous scheme may only be allowed if the following conditions are complied with, thus:

- (a) the original contract is the result of a Competitive Bidding;
- (b) the subject contract to be negotiated has similar or related scopes of work;
- (c) it is within the contracting capacity of the contractor/consultant;
- (d) the contractor consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
- (e) the amount involved does not exceed the amount of the ongoing project; and,
- (f) the contractor/consultant has no negative slippage/delay: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract.

In fine, Negotiated Procurement under the Adjacent or Contiguous modality, sanctioned by Section 53.4 of the IRR, may be resorted to only when all the above-mentioned conditions are complied with.

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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