



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

NPM No. 89-2014

27 October 2014

MR. EMIGDIO P. TANJUATCO, III

President and CEO

CLARK INTERNATIONAL AIRPORT CORPORATION

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

Corporate Office Bldg., Civil Aviation Complex,

Clark Freeport Zone, Pampanga

Re: Procurement Period for Emergency Cases

Dear Sir:

This refers to your letter dated 21 October 2014 requesting for guidance on the implementation of Section 53.2 (Emergency Cases) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that the Clark International Airport Corporation (CIAC) – Bids and Awards Committee (BAC) commenced the competitive bidding process for Infrastructure Project: Supply, Delivery, Installation, Testing and Commissioning of Instrument Landing System (ILS) with Co-Located Low Power Distance Measuring Equipment (DME) and Doppler Very High Frequency Omni Directional Range (DVOR) with Co-Located High Power DME. But at the post-qualification stage, the CIAC Board of Directors terminated the bidding of the said project.

Immediately thereafter, the existing ILS and DVOR of the Clark International Airport (CRK), which had exceeded its fifteen (15) year lifespan, suffered substantial damage and were beyond repair. As such, the CIAC-BAC plans to resort to the emergency mode of procurement as these equipment are vital to the operations of the CRK. The equipment are being used as navigational aids for the safe landing and proper routing of aircraft on the runway in accordance with International Civil Aviation Organization (ICAO) standards. The CRK acts as the alternate airport to Ninoy Aquino International Airport (NAIA) and it is being prepared for the Asia Pacific Economic Cooperation (APEC) in 2015.

Our guidance is now being sought as to whether the CIAC-BAC may adopt emergency procurement timelines as it may deem fit in view of the urgency and exigency of the situation.

A careful review of the relevant provisions of RA 9184 and its revised IRR indicate no prescribed timelines or procedure for the use of Negotiated Procurement through Emergency Cases modality under Section 53.2. Nonetheless, we wish to stress that the decision to resort to this alternative modality must be attended by highly exceptional circumstances, subject to the approval of the Head of the Procuring Entity (HOPE), whenever justified by conditions

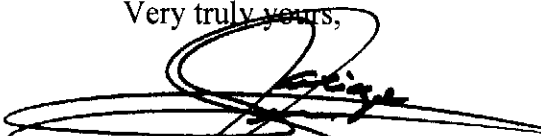
provided under the law, taking into consideration the promotion of economy and efficiency in public procurement.

The instances under which the procuring entity (PE) may directly negotiate a contract with a legally, technically and financially capable contractor under Section 53.2 of the IRR of RA 9184 are the following: (1) in case of imminent danger to life or property during a state of calamity, or (2) when time is of the essence arising from natural or man-made calamities, or (3) other causes where immediate action is necessary, for the purpose of preventing damage to or loss of life or property; or, (4) to restore vital public services, infrastructure facilities, and other public utilities.

The determination and accountability for the use of such alternative method of procurement, and the conditions and circumstances upon which these are based rest primarily with the HOPE, upon prior recommendation of the BAC. Nonetheless, when such government proposed procurement undertaking involves an amount of at least Five Hundred Million Pesos (PhP 500,000,000.00) and the HOPE has made a determination that it falls under any of the exceptions from competitive bidding provided under RA 9184 and its revised IRR, prior approval of the GPPB should be secured pursuant to Section 4 of Executive Order (EO) 423 s. 2005, as amended by EO 645, s. 2007.

We hope that the opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director

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02/05/15

FROM :

FAX NO. :

23 Oct. 2014 11:23PM P2



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
CLARK INTERNATIONAL AIRPORT CORPORATION
ISO 9001:2008 CERTIFIED Certificate No. 01 100 096505

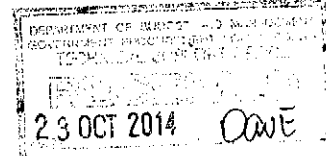


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21 October 2014

ATTY. DENNIS S. SANTIAGO
Executive Director III
GPPB - Technical Support Office
Unit 2506, Raffles Corporate Center
F. Ortigas, Jr., Ortigas Center
Pasig City



*Mrk,
Please prepare OPINION.
Take note of the declaration of
failure/consultation by CRK Board.
And its relation to the emergency proc. 2014*

**RE: Request for Opinion on the Procurement
Period for Emergency Cases**

Dear Atty. Santiago:

We are respectfully requesting for guidance and assistance relative to the provisions of Republic Act No. 9184 and its Revised Implementing Rules and Regulations, specifically, on Section 53.2 Emergency Cases.

As a background, on 01 October 2014, the Clark International Airport Corporation (CIAC) – Bids and Awards Committee (BAC) commenced with the public bidding for the *infrastructure* project: Supply, Delivery, Installation, Testing and Commissioning of Instrument Landing System (ILS) with Co-Located Low Power Distance Measuring Equipment (DME) and Doppler Very High Frequency Omni Directional Range (DVOR) with Co-Located High Power Distance Measuring Equipment (DME).

While the bidding process was at the post-qualification evaluation stage, the CIAC Board of Directors issued Resolution No. SM-05-04, Series of 2014 on 29 August 2014 where it was resolved that: (1) the bidding of the project under the procurement of infrastructure be terminated; and (2) the BAC is directed to issue a resolution terminating the bidding of the said project under the procurement of infrastructure mode.

Immediately thereafter, the existing ILS and DVOR of the Clark International Airport (CRK) which had exceeded its fifteen (15) year lifespan, suffered substantial damage and was beyond repair as parts needed for it can no longer be purchased and were no longer available. These equipment are vital to the operations of the CRK for these are used as navigational aids for the safe landing and proper routing of aircraft on the runway in accordance with International Civil Aviation Organization (ICAO) standards.

In addition, the CRK acts as the alternate airport to Ninoy Aquino International Airport (NAIA) and the fact that the CRK needs to be prepared for the Asia Pacific Economic Cooperation (APEC) in 2015. Hence, the emergency mode of procurement is a necessary means in restoring public services, facilities and utilities.

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Thus, the CIAC-BAC intends to commence with the emergency procurement on the 4th week of October 2014. Timelines for this type of procurement are not provided for under R.A. No. 9184 and its Revised IRR. To ensure that the CIAC-BAC acts in compliance with existing laws, phone calls to the GPPB were made by the CIAC-BAC Secretariat with respect to the said timelines. In reply, it was stated that there are no timelines provided for in the said law as observed by the CIAC-BAC. We are thus requesting for guidance as to whether the CIAC-BAC may dictate its own timelines as it may deem fit in view of the urgency and exigency of this situation.

We thank you in anticipation of your continued support in the development of the Clark International Airport.

Very truly yours,


EMIGDIO P. TANJUATCO, III
President and CEO

FROM :

FAX NO. :

23 Oct. 2014 11:23PM P1

FAX TRANSMITTAL FORM

ATTENTION : ATTY. DENNIS S. SANTIAGO	FROM : CLARK INTERNATIONAL AIRPORT CORPORATION
COMPANY : GOVERNMENT PROCUREMENT POLICY BOARD	DEPT : LEGAL DEPARTMENT
FAX NO. (02) 900-6741 TO 44	TEL. NO. (045) 599-2888 loc. 208 fax (045) 599-2888 loc. 123
DATE : 23 OCTOBER 2014	Total no. of sheets (including this page) 3 PAGES
MESSAGE : Hard Copy of the letter to be delivered via registered mail, courier and personal delivery.	