



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

**NPM No. 95-2012**

8 August 2012

**HON. ARNEL PACIANO D. CASANOVA, ESQ.**

*President/Chief Executive Officer*

**BASES CONVERSION DEVELOPMENT AUTHORITY (BCDA)**

2/F Bonifacio Technology Center

31<sup>st</sup> St. cor. 2<sup>nd</sup> Ave., Bonifacio Global City

1634 Taguig, Metro Manila

Dear Atty. Casanova:

We acknowledge receipt of your letter dated 27 April 2012 regarding the proposed procurement of the Contract for Interim Operation and Maintenance (O&M) through Negotiated Procurement (Emergency Cases) under Section 53.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184.

In your letter, you represented that the current Contract for Interim O&M between BCDA and the Joint Venture of First Philippine Holdings Corporation, Egis Road Operation, and Tollways Management Corporation as Interim Service Provider (ISP) is set to expire on 27 April 2012. Moreover, it was manifested that the Subic-Clark-Tarlac Expressway (SCTEX) is a critical government infrastructure project that must remain operational and maintained on a 24/7 basis as it provides service to the motoring public, and to the nation as a whole. Its closure due to the unavailability of an operator would cause the government to lose much needed resources to pay off the foreign loan used for the project as well as to properly maintain the toll road. As such, the BCDA thru its Bids and Awards Committee (BAC) issued BAC Resolution No. 2012-04-011, to procure the services of the ISP through Negotiated Procurement pursuant to Section 53.2 of the IRR of RA 9184.

We wish to reiterate that Section 10, Article IV of R.A. 9184 and its IRR prescribes that all procurement shall be done through Competitive Bidding. Alternative methods shall only be resorted to in highly exceptional cases provided that the prior approval of the Head of the Procuring Entity (HOPE) or his duly authorized representative is obtained and provided further that the conditions under Rule XVI of the Act are complied with. The determination and accountability for the use of Negotiated Procurement (Emergency Cases), under Section 53.2 of the IRR of RA 9184, as an alternative mode of procurement rests primarily with the HOPE.

For your guidance, emergency cases under Section 53.2 of the IRR pertain to instances where there is a 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

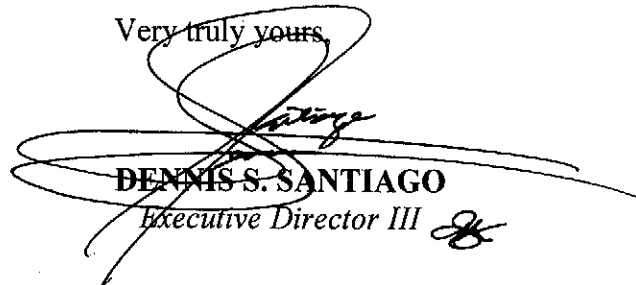
public services, infrastructure facilities and other public utilities. As earlier mentioned, the applicability and the determination of valid and justifiable circumstances warranting the use of "negotiation" as an alternative procurement modality primarily lies with the HOPE. In this case, BCDA and its HOPE are in the best position to assess, evaluate, and determine that the grounds and causes adverted to, justifying use of negotiated procurement through the "emergency" modality, are truly existing and the harm or danger or loss sought to be prevented are real and not merely based on speculation, surmise or weak probability.

Accordingly, the use of Negotiated Procurement premised on Section 53.2 of the revised IRR must be couched upon actual circumstances and situations determined through a careful and meaningful assessment of all causes supporting a reasonable conclusion that there is an incumbent or imminent danger to or loss of life or property if the subject matter of the procurement is not procured immediately through negotiation based on an emergency.

In keeping with our mandate to ensure the proper implementation by procuring entities of RA 9184, its IRR and other procurement related laws and regulations, we shall be furnishing a copy of this letter to the Commission on Audit (COA) for their information and guidance.

We hope our advice provided sufficient guidance on the matter, and stress that this opinion is being rendered on the basis of the particular circumstances as presented and may not be applicable given a different factual and circumstantial backdrop. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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Copy Furnished:

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