



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

NPM No. 96-2013

20 December 2013

MR. HOMER E. DIOKNO

Vice Chairman, Bids and Awards Committee (BAC)

NATIONAL IRRIGATION ADMINISTRATION (NIA) – REGION 5

Panganiban Drive, Naga City


Re: Negotiated Procurement - Adjacent or Contiguous

Dear Mr. Diokno:

This is in response to your letter dated 12 December 2013, which we received on 17 December 2013, seeking our opinion on the propriety of procuring a proposed infrastructure project through Negotiated Procurement (Adjacent or Contiguous) under Section 53.4¹ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that during the construction of a building (Building 1) for NIA Region 5, a proposal was made to construct another building (Building 2) within the same compound as Building 1. NIA Region 5 intends to procure the construction of Building 2 through Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of IRR of RA 9184, asserting that all the conditions stated therein are present. NIA Region 5 further alleges that Buildings 1 and 2 would be constructed about seven (7) meters apart, facing each other within the same site development plan in the compound, and their drainage systems, as well as all other plans are interconnected. It is in this context that you are seeking our confirmation that the construction of Building 2 could be procured through Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of IRR of RA 9184.

At the outset, we wish to inform you that pursuant to Section 10 of RA 9184 and its IRR, all procurement, as a general rule, shall be done through competitive bidding. Alternative methods of procurement, however, are allowed in highly exceptional cases in order to promote economy and efficiency subject to the prior approval of the Head of the Procuring Entity (HOPE) upon favorable recommendation of the BAC.²

The determination and the decision to resort to the alternative modality of Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of IRR of RA 9184 in the procurement of the construction of Building 2 is subject to the prior approval of the HOPE 

¹ Section 53.4. Adjacent or Contiguous. Where the subject contract is adjacent or contiguous to an on-going Infrastructure Project or Consulting Service where the consultants have unique experience and expertise to deliver the required service; Provided, however, That (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 projects; and (f) the contractor/consultant has no negative slippage.

² NPM No. 26-2011 dated 27 December 2011.

upon favorable recommendation of the BAC, provided that the conditions set forth therein are present.

For your guidance, Section 53.4 of the IRR of RA 9184 provides that in the instance of a procurement of an infrastructure project or consulting services that is adjacent or contiguous to an ongoing infrastructure project or consulting services, the alternative modality of Negotiated Procurement may be resorted to. The phrase "adjacent or contiguous" has been clarified in an earlier opinion of this office as referring to projects that are in actual physical contact with each other in the case of infrastructure projects.³ 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.

Based on the foregoing, prior to resorting to Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of the IRR of RA 9184, NIA Region 5 should be able to establish not only the existence of the conditions under Section 53.4 of the IRR of RA 9184, but also that the Buildings 1 and 2 are in actual physical contact of each other. We reiterate that the determination of the existence of the conditions warranting resort to any of the alternative methods of procurement falls solely within the ambit of the authority and accountability of the Procuring Entity.

We hope that this 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 LORNE S. NACARIO
Officer-In-Charge

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³ NPM No. 022-2012 dated 22 February 2012.