

**GOVERNMENT PROCUREMENT POLICY BOARD  
TECHNICAL SUPPORT OFFICE****NPM No. 98-2012**

10 August 2012

**ATTY. NELSON DE JESUS**  
*City Administrator/BAC Chairman*  
**CITY OF PARAÑAQUE**  
Barangay San Antonio,  
Parañaque City 1700

**Re: Negotiated Procurement (Emergency Cases) for temporary housing units**

Dear Atty. De Jesus:

This is in response to your letter dated 09 May 2012 requesting guidance on the use of Negotiated Procurement under Emergency Cases, as provided under Section 53(b) of Republic Act (RA) No. 9184 and Section 53.2 of its revised Implementing Rules and Regulations (IRR), to establish temporary housing units for the affected families of the Silverio Compound, whose informal settlements were ordered demolished by virtue of a court order.

It is represented that Branch 195 of the Regional Trial Court issued a Writ of Demolition on 17 October 2011 commanding the demolition of improvements and structures on certain lots covered by LRC Record No. 50189 and registered under Transfer Certificate of Title (TCT) Nos. 21712/21713 with the assistance of barangay officials and local police. On 23 April 2012, in the course of carrying out the demolition order, violence erupted between the local police and the informal settlers, resulting in the death of at least one person and injuries to many others.<sup>1</sup> The City of Parañaque now intends to establish temporary housing units as staging areas for the affected families on the appreciation that the situation falls under Section 53.2 of the IRR, and that immediate action is necessary to prevent further escalation of violence and loss of lives.

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

As you have aptly noted, Negotiated Procurement under Section 53.2 of the IRR is an alternative method of procurement which may be resorted to in case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural

<sup>1</sup> <http://newsinfo.inquirer.net/181289/paranaque-demolition-clash-kills-1-hurts-dozens>; <http://www.interaksyon.com/article/30095/1-killed-as-silverio-compound-residents-clash-with-police-during-demolition> (Last accessed on 10 August 2012.)

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.

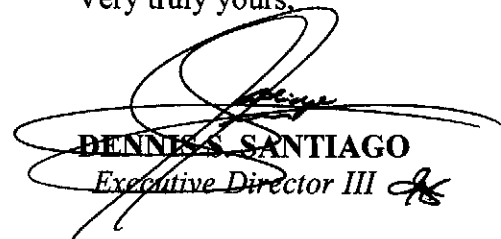
Apart from establishing the existence of the emergency situation described in the IRR, it is imperative for the City Government to provide sufficient basis and justification that the procurement of an infrastructure project for the construction of temporary housing units will address the emergency situation identified. Additionally, the emergency situation conceived must be real and not merely based on assumptions, surmises, or weak probabilities. Moreover, the procuring entity must not in any way, directly or indirectly, cause or contribute to the emergency situation sought to be addressed.

The determination and accountability for the use of the alternative methods of procurement, and the conditions and circumstances upon which these are based rest primarily with the HOPE, upon prior recommendation of the BAC. Thus, because of their access to the situation in the Silverio Compound, the HOPE and BAC of the City of Parañaque are in the best position to assess, evaluate, and determine the existence of the conditions set forth under Section 53.2 of the IRR, and validate the suitability and reasonableness of the proposed project identified to address the emergency situation. Consequently, if the circumstances needed for the application of Section 53.2 of the IRR are not present, the planned construction of housing facilities (temporary or permanent) should undergo competitive bidding.

Lastly, we wish to stress that prior approval of the GPPB on the propriety of using a particular alternative method of procurement is not required under RA 9184 and its IRR<sup>2</sup>. The prior approval of the GPPB should be secured only when a 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 IRR.<sup>3</sup>

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS SANTIAGO**  
*Executive Director III*

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<sup>2</sup> NPM Nos. 45-2011 dated 29 December 2011; 006-2009 dated 13 January 2009; 023-2008, dated 16 September 2008.

<sup>3</sup> E.O. 423, s. 2005 (Repealing E.O. 109-A dated September 18, 2003, Prescribing the Rules and Procedures on the Review and Approval of all Government Contracts to Conform with RA 9184), as amended by E.O. 645, s. 2007.