



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

**NPM No. 112-2013**

26 December 2013

**MS. JASMIN R. RIO**  
**PHILIPPINE INTERNATIONAL TRADING CORPORATION**  
NDC Bldg., 116 Tordesillas St., Salcedo Village  
Makati City

**Re : Negotiated Procurement (Adjacent or Contiguous)**

Dear Ms. Rio:

We refer to your email sent on 27 November 2013, seeking clarification on Section 53.4 (d) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, which provides as one of the conditions in using Negotiated Procurement (Adjacent or Contiguous) that “the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost”.

As represented, while the project for one lot of supply, delivery and installation of various equipment and site renovation is being done, it was determined that there is a need to supply, deliver, and install hot air plenum system to achieve an overall increase in cooling efficiency. For this reason, PITC is considering entering into a contract with the existing contractor through Negotiated Procurement (Adjacent or Contiguous) under Section 53.4 of the IRR of RA 9184. All the conditions for Negotiated Procurement (Adjacent or Contiguous) have been met, except for Section 53.4 (d) of the IRR. It appears that the new project is not included in the original scope of work so PITC cannot determine whether the contractor is using the same or lower unit prices. It is in this context that the above-mentioned request is being made. In addition, clarification is being requested on whether it is necessary for PITC to get a formal offer for the new lot from the contractor.

**Condition Requiring the Use of the Same Prices or Lower Unit Prices**

Pursuant to Section 53.4 of the IRR of RA No. 9184, the procuring entity may directly negotiate an infrastructure contract with a technically, legally, and financially capable contractor where the subject contract is adjacent or contiguous to an on-going infrastructure project, subject to the conditions enumerated therein. One of these conditions is that the contractor/consultant should use the same prices or lower unit prices as in the original contract. For a clearer understanding of the application of this condition, it should be read together with Section 53.4 (b) of the IRR, which requires that the projects should have similar or related scopes of work.

We can infer from these two conditions under Section 53.4 of the IRR that the condition that the contractor/consultant shall use the same or lower unit prices as in the original contract applies only to the scopes of work that are present in both projects, and should not be interpreted as a qualification that only adjacent or contiguous projects that have the exact same scopes of work shall be acceptable.

As such, we wish to clarify that Section 53.4 (d) of the IRR of RA 9184 must be complied with insofar as the same scopes of work of the ongoing and adjacent/contiguous projects are concerned. It follows then that if there are no similar scope of work between the two projects, compliance with such condition is not necessary. The procuring entity, however, should ensure that the unit prices are lower than or equal to the prevailing market prices. This notwithstanding, it should be stressed that all other conditions required in Section 53.4 should be complied with.

### **Submission of Offer by the Original Contractor**

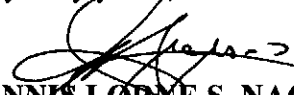
Anent your second query, please note that contracts are established upon the concurrence of the following requisites: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and cause of the obligation which is established.<sup>3</sup> Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract.<sup>4</sup>

In this regard, although the rules are silent as to the submission by the contractor of a formal offer for the adjacent/contiguous project, it is imperative that the original contractor submits an offer that is acceptable to the procuring entity as compliant with the terms and conditions the latter has adopted for the adjacent/contiguous project, in order to establish the basis for the new contract.

In sum, we wish to clarify that the condition under Section 53.4 (d) of the IRR for the use of Negotiated Procurement (Adjacent or Contiguous) is applicable only to the unit price of scopes of work that are present in both the ongoing project and the adjacent/contiguous project, and the original contractor should submit an offer that the procuring entity finds acceptable in accordance with the terms and conditions it has adopted for the adjacent/contiguous project.

We hope that this opinion issued by the GPPB-TSO sufficiently addresses your concerns. Note that this opinion is being rendered on the basis of the facts and particular circumstances as presented, and may not be applicable given a different set of facts and situation. 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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<sup>3</sup> Article 1318 of the Civil Code of the Philippines.

<sup>4</sup> Article 1319 of the Civil Code of the Philippines.