

NPM No. 17-2008

2 September 2008

MS. ANNABEL M. ATILLO

OIC- Regional Director

DEPARTMENT OF BUDGET AND MANAGEMENT – REGIONAL OFFICE X

Zone 1 National Highway, Bulua, Cagayan de Oro City

Re : Negotiated Procurement

Dear Ma'am:

We respond to your letter dated 30 April 2008, which we received 02 June 2008, seeking our opinion on matters pertaining to a letter-query you received from PHIVIDEC Industrial Authority (PIA).

Based on your representation, the main issue raised by PIA is whether or not it may resort to Negotiated Procurement invoking Section 53 (b) of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) in undertaking its infrastructure project.

Please be advised that our office had issued NPM No. 23-2007 which in brief states that as a general rule, procuring entity shall adopt public bidding as a mode of procurement. However, in order to promote efficiency and economy, the procuring entity may resort to any alternative mode of procurement, subject to the approval of the head of the procuring entity and whenever justified by the conditions provided therein (Section 48, RA.9184). For example, under Section 53 (b) of the IRR-A, negotiated procurement may be resorted to during a state of calamity or when time is of the essence, viz:

“Section 53. Negotiated Procurement

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x.

b) In 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. x x x.”

Under such method, the negotiation shall be made with any of the following: (i) previous supplier, contractor or consultant of good standing of the procuring entity; or (ii) a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred (Section 54.2 [d], IRR-A).

In relation to this, Section 12 of R. A. 9184 provides that, it is the Bids and Awards Committee (BAC) which shall recommend to the head of the procuring entity the use of any of the alternative methods of procurement.


Consequently, the determination of the existence of the conditions when prompt action is necessary to prevent damage to or loss of life and property is entrusted by law to the sound discretion and prudence of the procuring entity based on its knowledge, experience and technical expertise on the procurement at hand. The BAC may recommend the use of the alternative method of negotiated procurement after ascertaining that said method is justified pursuant to Section 53 (b) above, subject to the approval of the head of the procuring entity.

Lastly, please take note that Executive Order No. 423, as amended, mandates that all government contracts involving an amount of at least 500 Million pesos which are proposed to be entered into through alternative methods of procurement, must first have the approval of the Government Procurement Policy Board (GPPB).¹

This opinion is being rendered on the basis of the facts and particular circumstances as represented.

We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


EMILUISA C. PENAÑO
Officer-in-Charge

¹ Section 4, Executive Order 423, as amended.