

NPM No. 23-2007

30 July 2007

HON. RAPHAEL P. M. LOTILLA

Secretary

DEPARTMENT OF ENERGY

Energy Center, Merritt Road

Fort Bonifacio, Taguig City 1201

**Re: Negotiated Procurement under Section 53 (b) of the IRR-A
of Republic Act No. 9184**

Dear Sir:

We respond to your letter dated 6 June 2006, which we received on 26 June 2006, requesting the Government Procurement Policy Board (GPPB) to exempt landslide prevention and mitigation projects from the coverage of Republic Act No. 9184 (R. A. 9184). Based on the documents furnished this office, the recommendations for the identified landslide risk areas pertain to, among others, pipe protection or barrier, construction of masonry wall, retaining wall, pipe shelter, and interceptor canals, installation of horizontal drains, rip rapping of slopes, installation of safety signs, and other civil and structural mitigating measures.

In accordance with Section 10 of R. A. 9184, the procuring entity shall, as a general rule, 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, R. A. No. 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:

“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).

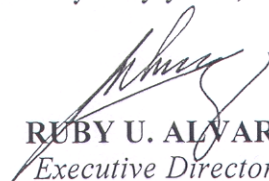
Please be advised that under Section 12 of R. A. 9184, it is the Bids and Awards Committee (BAC) which shall recommend to the head of the procuring entity the use of any of the alternative methods of procurement.

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 (Section 12, R. A. in relation with Section 48.1 of the IRR-A of R. A. 9184).

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,


RUBY U. ALVAREZ
Executive Director III