



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

NPM No. 27-2011

27 December 2011

MS. DOLORA N. NEPOMUCENO

Assistant General Manager and Officer-in-Charge

LAGUNA LAKE DEVELOPMENT AUTHORITY

Km. 24 Manila East Road, Don Hilario Cruz Ave.,
Club Manila East Compound, Brgy. San Juan, Taytay, Rizal

**Re: Resolution of the Bids and Awards Committee for the
Use of Negotiated Procurement (Emergency Cases)**

Dear OIC Nepomuceno:

We respond to your letter dated 4 September 2011 seeking guidance on whether the use of alternative method of procurement would still necessitate the recommendation of the Bids and Awards Committee considering the emergency character of the procurement.

Based on your letter, LLDA engaged the services of a backhoe owner-operator in the conduct of water hyacinth clean-up operation in the lake waters of Cardona, Rizal, through Negotiated Procurement (Emergency Cases). It was also represented that in compliance with Section 48 in relation to Section 53.2 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, the Section Chief of the Fisheries Clearances and Permits Division executed a memo justifying the immediate need of LLDA for the hiring of a backhoe operator, which was later approved by the LLDA General Manager.

We wish to reiterate that as a general rule, Section 10 of RA 9184 and its IRR prescribes that all procurement shall be done through competitive bidding. Alternative methods may be resorted to only in highly exceptional cases subject to the approval of the Head of the Procuring Entity (HOPE), and whenever justified by the conditions provided in the law. In addition, no procurement can be undertaken unless it is in accordance with the approved Annual Procurement Plan (APP) of the agency. Thus, if the procurement to be undertaken is not included in the APP, it is necessary that a supplemental APP or an amendment thereto be made incorporating the intended project to be procured.

Please note that Section 53.2 of the IRR allows procuring entities to directly negotiate with a technically, legally, and financially capable supplier or contractor in emergency cases, provided that the required conditions or instances are present. We wish to emphasize that the determination of the existence of these instances lies within the discretion of the procuring entity taking into account the circumstances attending its procurement.

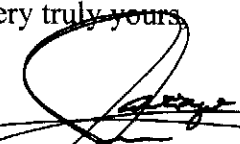
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It is the function of the BAC to recommend which alternative method may be utilized in the procurement of a specified project, subject to the approval of the HOPE or its authorized representative. When Negotiated Procurement (Emergency Cases) is adopted as an alternative method of procurement, it is incumbent upon the BAC to comply with the requirements specified under the procurement law and its associated rules.

Accordingly, if the water hyacinth clean-up operation in the lake waters of Cardona, Rizal, was not included in the APP of LLDA, then it is essential that a BAC resolution recommending the use of alternative method be made; and, a supplemental APP or an amendment thereto be issued to reflect the project before proceeding with its procurement. However, if the project of the LLDA, involving the engagement of a backhoe operator for the water hyacinth cleanup, forms part of an item in its APP for projects requiring the use of Negotiated Procurement (Emergency Cases) as an alternative method of procurement, then a BAC resolution and supplemental APP are no longer necessary.

We hope that our advice sufficiently addresses your concern. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III 