



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

NPM No. 45-2011

29 December 2011

ATTY. CESAR E. MALAZARTE
Chairman, Bids and Awards Committee
CITY OF LEGAZPI
City Hall, Legazpi City

Re: Negotiated Procurement (Emergency Cases)


Dear Atty. Malazarte:

We respond to your letter dated 7 September 2011 seeking our opinion on the propriety of resorting to Emergency Cases under Negotiated Procurement of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

As represented, the City Government of Legazpi (City Government) is scheduled to construct classrooms under the Department of Education (DepED) - LGU Counter-parting Scheme with an average cost of PhP800,000 per unit and a total cost of PhP15 million. At present, the City Government has a backlog of at least thirty seven (37) classrooms and the school buildings should have been constructed during the months prior to June 2011. It is only recently that the formal written request of DepED and the funding were received. Given these circumstances, the City Government would like to resort to the alternative method of procurement, specifically, negotiated procurement under emergency cases, in order to restore the service of providing free elementary and secondary education to out-of-school youths and to those who are adversely affected by the overcrowding situation in existing classrooms.

We wish to inform you that Section 10 of RA 9184 and its IRR mandates that competitive bidding is the primary mode of procurement. Exceptions are allowed only under Rule XVI on alternative methods of procurement if there is prior approval of the Head of the Procuring Entity (HOPE) and whenever it is justified by the conditions as well as to promote economy and efficiency¹.

For your guidance, Section 53.2 of the IRR contemplates three instances for the application of negotiated procurement under emergency cases:

1. In case of imminent danger to life or property during a state of calamity;
2. 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; and
3. To restore vital public services, infrastructure facilities and other public utilities. 

¹ Section 48.1, Rule XVI of the IRR

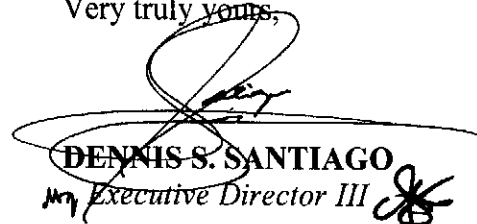
As we have previously discussed in similar opinions², the approval of the GPPB on the propriety of using a particular alternative method of procurement is not required under RA 9184 and its IRR. The determination and accountability for the use of any of the alternative methods of procurement rests primarily with the HOPE, upon prior recommendation of the BAC.

Nonetheless, we are of the view that the attending conditions in this case do not warrant an exemption from Section 10 of RA 9184 and its IRR on public bidding. The rationale and basis provided is not one of the grounds that would allow the application of negotiated procurement under emergency cases since the concern relative to the lack of classrooms has been in existence for some time now.

Based on the foregoing, the HOPE and the BAC are in the best position to determine the existence of the conditions and to validate the urgency of the situation. In case the circumstances needed for alternative modes of procurement are not present, then public bidding should be resorted to in the planned construction of the classrooms.

We hope our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
My Executive Director III

//mbquilang

² Non Policy Matter Nos. 006-2009 dated 13 January 2009; 023-2008 dated 16 September 2008