

NPM No. 003 - 2022

06 April 2022

HEAD OF PROCURING ENTITIES

Re: Procurement Activities During an Election Period

Dear Sir/ Madam:

Further to the guidance provided under **Government Procurement Policy Board (GPPB) Resolution No. 20-2021**¹ and **Circular No. 03-2021**,² the GPPB – Technical Support Office (GPPB-TSO) is issuing this opinion in anticipation of requests for clarifications from Procuring Entities (PEs) in the conduct of procurement activities in relation to the prohibition against the release, disbursement, or expenditure of public funds under Section 261(v) of the Batas Pambansa Bilang 881, otherwise known as the Omnibus Election Code of the Philippines (OEC).

At the outset, it bears emphasis that PEs are allowed to proceed with the commencement and completion of their procurement activities from the Pre-Procurement Conference until Post-Qualification during the period of forty-five (45) days before a regular election and thirty (30) days before a special election (“Prohibited Period”). **PEs are, however, constrained from awarding a contract through the issuance of a Notice of Award during the same period**³ for the following procurement projects: (i) all kinds of **Public Works**; (ii) **Social Projects**; and (iii) **Housing-related Projects** (“Prohibited Projects”). The rationale behind this is simple, the issuance of a Notice of Award will effectively result in the release, disbursement, or expenditure of public funds, which is expressly proscribed under the OEC.

In particular, Public Works shall refer to “construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government.”⁴

On the other hand, Social Projects refer to “activities or projects undertaken by the Department of Social Welfare and Development and any other office in any other department of the government performing functions similar to the said department.”⁵ While Housing-related Projects refer to “activities or projects undertaken by the Housing and Urban Development Coordinating Council and any other office in any other department of the government performing functions similar to the said department.”⁶

Nonetheless, the following Prohibited Projects are exempted or allowed to be undertaken by the PEs during the Prohibited Period (“Exempted Projects”):

¹ Guidelines on the Conduct of Procurement Activities During the Election Period for the 09 May 2022 National and Local Elections

² Copies of GPPB Resolution No. 20-2021 and GPPB Circular No. 03-2021 may be accessed through this link: <https://www.gppb.gov.ph/issuances/Resolutions/GPPB%20Resolution%20No.%2020-2021.pdf>

³ Section 261(v), Article XXII of OEC

⁴ Section 5(k) of RA No. 9184

⁵ Item 3.3 of the GPPB Circular No. 03-2021

⁶ Item 3.4 of the GPPB Circular No. 03-2021

A. Public Works

1. Maintenance of existing and/or completed public works where no additional laborers are employed;
2. Work undertaken by contract through public bidding or negotiated contract awarded;
3. Preparatory works or the payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment;
4. Emergency work necessitated by the occurrence of a public calamity, due to force majeure or any fortuitous event, but limited to the restoration of the damaged facility, unless the COMELEC authorized such other emergency work;
5. Ongoing projects commenced before the campaign period and are listed as authorized public works or projects by the COMELEC; and
6. Projects under foreign agreements or ongoing foreign-assisted projects submitted to the COMELEC.

B. Social Projects

1. Routine and Normal Expenses; and
2. Such other expenses authorized by the COMELEC after due notice and hearing.

C. Housing-Related Projects

1. Administrative Expenses; and
2. Such other expenses authorized by the COMELEC after due notice and hearing.

Moreover, should PEs need to award contracts for any of the Prohibited Projects, a request for exemption may be submitted to the Commission on Elections (COMELEC), pursuant to its authority under the OEC, and COMELEC Resolution No. 10747.⁷

FREQUENTLY ASKED QUESTIONS

For easy reference of PEs in the conduct of procurement activities during the upcoming National and Local Elections, we have prepared the following frequently asked questions:

1. Are PEs allowed to undertake procurement activities during the Prohibited Period?

As a rule, PEs are allowed to proceed with the commencement and completion of their procurement activities from the Pre-Procurement Conference until Post-Qualification during the Prohibited Period, which is the period of forty-five (45) days before a regular election and thirty (30) days before a special election.

However, PEs are not allowed to issue a Notice of Award for the Prohibited Projects during the same period, unless it falls under the Exempted Projects.

⁷ COMELEC Resolution No. 10747 (Rules and Regulations on Prohibition against Release, Disbursement, or Expenditures of Public Funds, and Construction of Public Works, Delivery of Materials for Public Works, and Issuance of Treasure Warrants and Similar Devices (Section 261(V), (W) of the OEC) in connection with the May 9, 2022, Synchronized National and Local Elections, which may be accessed using this link: https://comelec.gov.ph/php-tpls-attachments/2022NLE/Resolutions/com_res_10747.pdf

2. Can the Head of Procuring Entity (HoPE) create a Bids and Awards Committee (BAC) during the Prohibited Period?

Yes. The HoPE can establish the BAC/s during the Prohibited Period as it does not relate to any of the Prohibited Projects or any of the prohibited activities in connection with the May 09, 2022 National and Local Elections under COMELEC Resolution 10695.⁸

3. Are PEs allowed to post its procurement activities during the Prohibited Period?

Yes. PEs are allowed to post procurement activities until the recommendation of the award even during the Prohibited Period since it does not involve the release, disbursement, or expenditure of any public funds for Prohibited Projects or any of the prohibited activities in connection with the May 09, 2022 National and Local Elections under COMELEC Resolution 10695.⁹

4. Are PEs allowed to extend the duration and effectivity of an ongoing contract during the Prohibited Period?

Yes. The HoPE may extend the duration and effectivity of an ongoing contract during the Prohibited Period since ongoing contracts are not among the Prohibited Projects and the extension of contracts is not among the prohibited activities in connection with the May 09, 2022 National and Local Elections under COMELEC Resolution 10695.

5. What are the Exempted Projects during the 2022 National and Local Elections or those Prohibited Projects that are nonetheless exempted or may still be undertaken by PEs during the Prohibited Period from 25 March 2022 to 08 May 2022?

Section 261(v) (Election Offenses) of the OEC provides the list of public works, social projects, and housing-related projects which are exempt from the prohibition against release, disbursement, or expenditure of public funds:

A. For Public Works

1. Maintenance of existing and/or completed public works where no additional laborers are employed;
2. Work undertaken by contract through public bidding or negotiated contract awarded before 25 March 2022;
3. Preparatory works or the payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment before 25 March 2022;
4. Emergency work necessitated by the occurrence of a public calamity, due to force majeure or any fortuitous event, but limited to the restoration of the damaged facility, unless the COMELEC authorized such other emergency work;
5. Ongoing projects commenced before the campaign period and are listed as authorized public works or projects by the COMELEC; and
6. Projects under foreign agreements or ongoing foreign-assisted projects submitted to the COMELEC.

⁸ In the matter of Prescribing the Calendar of Activities and Periods of Certain Prohibited Acts in Connection with the May 09, 2022 National and Local Elections.

⁹ In the matter of Prescribing the Calendar of Activities and Periods of Certain Prohibited Acts in Connection with the May 09, 2022 National and Local Elections.

B. For Social Projects

1. Routine and Normal Expenses; and
2. Such other expenses authorized by the COMELEC after due notice and hearing.

C. For Housing Related Projects

1. Administrative Expenses; and
2. Such other expenses authorized by the COMELEC after due notice and hearing.

6. Are PEs allowed to award a contract during the Prohibited Period?

As a rule, PEs are not allowed to issue a Notice of Award for all Prohibited Projects during the Prohibited Period. However, PEs are allowed to issue a Notice of Award for Exempted Projects.

7. Does the prohibition to issue a Notice of Award cover ongoing public works projects which began before the campaign period?

No. Pursuant to Section 261(v)(1) of the OEC, this prohibition shall not apply to ongoing public works projects commenced before the campaign period¹⁰ or similar projects under foreign agreements.

8. Will PEs violate the mandatory timelines under Republic Act No. 9184 if it does not award a contract during the Prohibited Period?

No. Since the issuance of the Notice of Award will effectively result in the release, disbursement, or expenditure of public funds which is proscribed under the OEC (unless it is otherwise exempted therein), the issuance of the Notice of Award is likewise proscribed to effectively implement the prohibition under the said law. Effectively, this legal prohibition under the OEC operates to suspend the counting of the mandatory timelines provided under RA No. 9184.

9. In case a PE was not able to award the contract by 24 March 2022, can the PE award the contract after the election day?

For Prohibited Projects, PEs may commence with the awarding of contracts on or after 09 May 2022. However, for Exempted Projects, PEs may award the contract even during the Prohibited Period or from 25 March 2022 to 08 May 2022, and ofcourse thereafter.

10. What is the recourse of PEs that wish to award Procurement Projects which are covered by the Prohibited Projects?

¹⁰ Section 3 of the OEC provides: Election and campaign periods. - Unless otherwise fixed in special cases by the Commission on Elections, which hereinafter shall be referred to as the Commission, the election period shall commence ninety days before the day of the election and shall end thirty days thereafter.

The period of campaign shall be as follows:

1. Presidential and Vice-Presidential Election - 90 days;
2. Election of Members of the Batasang Pambansa and Local Election - 45 days; and
3. Barangay Election - 15 days.

The campaign periods shall not include the day before and the day of the election.

However, in case of special elections under Article VIII, Section 5, Subsection (2) of the Constitution, the campaign period shall be forty-five days.

For PEs that wish to award Procurement Projects which are covered by the Prohibited Projects, they may direct their request for exemption to the COMELEC for resolution. Since the COMELEC has exclusive jurisdiction in implementing the OEC, pursuant to the powers vested upon it by law, it also follows that the COMELEC has sole authority to decide on any request for exemptions.

11. What if PEs would like to be clarified on specific issues on the application and interpretation of the prohibition against the release, disbursement, or expenditure of public funds during the Prohibited Period?

PEs may direct clarifications on the prohibition against release, disbursement, or expenditures of public funds to the Department of Budget and Management.

For the information and guidance of all.



ROWENA CANDICE M. RUIZ
Executive Director V

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