

NPM No. 004-2020

16 April 2020

HEADS OF PROCURING ENTITIES

Re: **Emergency Procurement under Republic Act No. 11469 or the Bayanihan to Heal as One Act**

Dear Sir/Madam:

With the enactment of Republic Act (RA) No. 11469 otherwise known as the "*Bayanihan to Heal as One Act*" ("*Bayanihan Act*"),¹ the President was authorized to undertake the procurement of identified goods and services as exemptions from the provisions of RA No. 9184 or the Government Procurement Reform Act in response to the Declaration of a State of National Emergency due to the Coronavirus Disease 2019 (COVID-19) outbreak.

Accordingly, the Executive Secretary issued a Memorandum² directing the Secretary of the Department of Budget and Management, who is likewise the Chairperson of the Government Procurement Policy Board (GPPB), to craft the guidelines for the conduct of procurement activities for the items exempted from RA No. 9184 under the *Bayanihan Act*.

Pursuant to the foregoing, the GPPB issued **Resolution No. 06-2020**³ approving the Issuance of **Circular No. 01-2020**,⁴ providing the Guidelines for Emergency Procurement under the *Bayanihan Act* ("Circular").

To guide Procuring Entities (PEs) in the conduct of Emergency Procurement under the *Bayanihan Act*, we are issuing this opinion to summarize the procedure and requirements as well as address possible issues and clarifications.

Applicability of Emergency Procurement under the Bayanihan Act

Starting April 12, 2020,⁵ all PEs may now undertake Emergency Procurement under the *Bayanihan Act* using the procedure and requirements provided in the Circular. The procedure is similar to those provided under Negotiated Procurement (Emergency Cases) under Section 53(b) of RA No. 9184 and Section 53.2 of its 2016 revised Implementing Rules and Regulations (IRR). Given the penal sanctions included in the Circular, the rules therein cannot be given retroactive application⁶ and may only be

¹ Approved on 24 March 2020.

² Dated 28 March 2020.

³ Published on 12 April 2020 in The Philippine Star.

⁴ GPPB Circular No. 01-2020 published on 12 April 2020 in The Philippine Star.

⁵ GPPB Circular No. 01-2020 became effective immediately upon its publication in The Philippine Star on 12 April 2020.

⁶ In the case of *Curata v. Philippine Ports Authority* (G.R. Nos. 154211-12, June 22, 2009), the Supreme Court held:

Statutes are prospective and not retroactive in their operation, laws being the formulation of rules for the future, not the past. Hence, the legal maxim *lex de futuro, judex de praeterito*—the law provides for the future, the judge for the past—which is articulated in Art. 4 of the Civil Code thusly: "Laws shall have no retroactive effect, unless the contrary is provided." The legislative intent as to the retroactive application of a law is made manifest either by the express terms of the statute or by necessary implication. The reason

adopted upon its effectivity on 12 April 2020. Thus, emergency procurement undertaken pursuant to Section 53(b) of RA No. 9184 and Section 53.2 of its 2016 IRR shall remain to be covered by said rules unless the same is cancelled and a new procurement covering the projects under the *Bayanihan* Act is commenced on or after 12 April 2020 following the Circular.

It is of equal importance to note that the provisions of the Circular is applicable only for the procurement of the following in order to mitigate, if not contain, the transmission of COVID-19, immediately mobilize assistance in the provision of basic necessities to families and individuals affected by the imposition of Community Quarantine, undertake measures that will prevent the overburdening of the healthcare system, immediately and amply provide healthcare, including medical tests and treatments to COVID-19 patients, persons under investigation, or persons under monitoring and undertake a program for recovery and rehabilitation, including a social amelioration program and provision of safety nets to all affected sectors:

- a. Goods, which may include personal protective equipment such as gloves, gowns, masks, goggles, face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines (e.g., paracetamol tablet and suspension, mefenamic acid, vitamins tablet and suspension, hyoscine tablet and suspension); testing kits; and such other supplies or equipment as may be determined by the Department of Health and other relevant government agencies;
- b. Goods and services for social amelioration measures in favor of affected communities;
- c. Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities;
- d. Establishment, construction, and operation of temporary medical facilities;
- e. Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and
- f. Ancillary services related to the foregoing.⁷

The determination of whether or not the Procurement Project⁸ falls under any of the foregoing rests on the PE, being the one responsible for the procurement planning which includes the identification of goods and services needed to undertake their respective mandates as well as the specific requirements for each of the procurement activity.

Procedure for Emergency Procurement under the *Bayanihan* Act

for the rule is the tendency of retroactive legislation to be unjust and oppressive on account of its liability to unsettle vested rights or disturb the legal effect of prior transactions.

⁷ Item 2.2 of the GPPB Circular No. 01-2020.

⁸ As defined under GPPB Circular No. 06-2019 dated 17 July 2019, a Procurement Project shall refer to a specific or identified procurement covering goods, infrastructure project or consulting services. A Procurement Project shall be described, detailed, and scheduled in the Project Procurement Management Plan prepared by the agency which shall be consolidated in the PE's APP.

The procedure for emergency procurement under the *Bayanihan* Act is almost identical with the one adopted under Negotiated Procurement (Emergency Cases), with a few improvements afforded by its exemption from the provisions of RA No. 9184.

As with any procurement, PEs shall prepare the project requirements, which shall include: (i) Project Name; (ii) Approved Budget for the Contract (ABC); (iii) Technical Specifications, Scope of Work, or Terms of Reference; (iv) Date of Delivery or Implementation; (v) Required Quantity; and (vi) Other relevant information that the PE may require.⁹ It is imperative that the PE confirms the budget availability and updates its Annual Procurement Plan (APP) for approval by the Head of the Procuring Entity (HoPE). The PE shall indicate “Emergency Procurement under the *Bayanihan* Act” as the procurement modality in its updated APP.¹⁰ However, the Circular allows the PE to commence with the procurement without an approved APP for as long as it is able to show proof¹¹ that there is a budget for the purpose.¹²

Once the foregoing has been settled, the PE may now directly negotiate or procure from a legally, technically, and financially capable supplier, distributor, manufacturer, contractor, or consultant (collectively referred to herein as “Supplier”) without need for a Request for Quotation or any equivalent document.¹³ What is important is for the PE to have the details of its project requirements and use the same as the basis in the negotiation with a Supplier. Note as well that bid security is not required under this modality.

It must be emphasized that after a determination, through initial market scanning or scoping, that no one Supplier is able to provide the total quantity required, PEs are allowed to procure from several sources, and the same shall not be considered as Splitting of Contracts.¹⁴

The PE shall then determine the legal, technical and financial capability of the Supplier. Item 3.4 of the Circular is instructive as it defines what constitutes a capable Supplier who can then qualify for award of contract, thus it is one that:

- a. Submitted the mandatory documentary requirements under Item 4.1 of the Circular or has committed to comply with the same in the Omnibus Sworn Statement (OSS) if said documents were to be submitted after award of contract;
- b. Complied with the technical specifications, scope of work or terms of reference set by the PEs, and other documents supporting the same, or has committed to comply with the same in the OSS if said documents were required to be submitted after award of contract; and
- c. Submitted any financial requirements of the project, or has committed to comply with the same in the OSS, if said documents were required to be submitted after award of contract.

Once the qualification of the Supplier has been determined, a recommendation for the award and the eventual award of contract shall proceed.¹⁵ It bears stressing that the HoPE is not precluded from exercising the reservation clause under Section 41 of RA

⁹ Item 3.1 of GPPB Circular No. 01-2020.

¹⁰ Item 3.2 of GPPB Circular No. 01-2020.

¹¹ A document or certification from the budget officer or equivalent position showing that there is a budget for the purpose.

¹² Item 3.2 of GPPB Circular No. 01-2020.

¹³ Item 3.3 of GPPB Circular No. 01-2020.

¹⁴ Item 3.1 of GPPB Circular No. 01-2020.

¹⁵ Item 3.4 of GPPB Circular No. 01-2020.

No. 9184 and not award the contract if, for any justifiable and reasonable ground,¹⁶ the same will not redound to the benefit of the government.¹⁷

As with bid security, performance and warranty securities shall not be required. In lieu thereof, the Supplier has made additional commitments in the OSS, to wit: (i) submit all the mandatory documentary requirements at anytime before award of contract or after award but prior to payment of contract; (ii) perform and deliver all of the obligations and undertakings, including the warranty provisions;¹⁸ and (iii) warrant that for the period stipulated the object of the contract shall be free from defects and conform to quality standards and technical specifications of the said contract.

Failure of the Supplier to comply with any of the foregoing is sufficient ground for the PE to initiate Blacklisting under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants).¹⁹ Moreover, in case advance payment was made, failure to perform any of its obligations in the contract constitutes criminal liability for Swindling (*Estafa*) under Article 315 of the Act No. 3815, as amended or the Revised Penal Code (RPC).²⁰ This is in addition to the imposition of liquidated damages and other fines and penalties under other relevant laws, rules and regulations, or as agreed by the parties in the contract.

Delegation of Authority

In recognition of the many functions the HoPE needs to simultaneously undertake especially in times of crisis such as the COVID-19 pandemic, the Circular encourages the delegation of authority. Such delegation will allow for the timely conduct of procurement activities and responsive action on the part of the various procurement actors to the needs of the PE in managing this pandemic.

Thus, the HoPE is authorized to delegate the authority: (i) to act as HoPE, particularly in the approval of the APP and award of contract; and (ii) to directly negotiate or conduct the procurement activities to the End-user unit or any other appropriate bureau, committee, support or procuring unit.²¹

In delegating said authorities, the HoPE shall ensure that the delegate has the technical capacity and understands the responsibilities and accountabilities attached thereto. The HoPE shall likewise comply with the rule on conflict of interest, particularly when delegating the authority to award contracts. Thus, the HoPE shall not delegate the said authority to the BAC Chairperson and members or to any person who has been authorized to directly negotiate or undertake the procurement.

¹⁶ Section 41 of RA No. 9184 and its 2016 IRR provides that the HoPE reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

- a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GoP, as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, or technically feasible, as determined by the HoPE; (ii) if the project is no longer necessary as determined by the HoPE; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the PE.

¹⁷ Item 3.5 of GPPB Circular No. 01-2020.

¹⁸ Item 5 of GPPB Circular No. 01-2020.

¹⁹ Issued through GPPB Resolution No. No. 40-2017 dated 21 December 2017.

²⁰ Item 10.1 of GPPB Circular No. 01-2020.

²¹ Items 3.2, 3.3 and 3.5 of GPPB Circular No. 01-2020.

Documentary Requirements

At the outset, it must be emphasized that if the PE has on file the bidder’s updated documentary requirements, whether through the Philippine Government Electronic Procurement System (PhilGEPS) Certificate of Registration and Membership or its own records, it shall not require its re-submission, except for the OSS. The OSS should include the additional provisions indicated in Appendix 1²² of the Circular, to be submitted at any time before award of contract.²³

Otherwise, the PE shall require the submission of the applicable documents in printed copies or by electronic mail or facsimile, at any time before award of contract or after award but before payment,²⁴ thus:

<p>Projects with an Approved Budget for the Contract (ABC) of Five Hundred Thousand Pesos (PhP500,000.00) and Below</p>	<p>Mayor’s or Business Permit</p> <p>A copy of the recently expired Mayor’s or Business Permit and the Official Receipt as proof of application and payment for the renewal of the permit is allowed, subject to submission of the Mayor’s Permit after award of contract.</p>
<p>Additional Requirements for Projects with an ABC Above (PhP500,000.00)</p>	<p>Income Tax Returns (Annual Income Tax Return of the preceding tax year) OR Business Tax Returns (Value Added Tax or Percentage Tax Return covering the previous six months)</p> <p>OSS, which shall be an original copy and must be submitted before award of contract.</p> <p>The PE may accept a copy of an unnotarized OSS, subject to submission of the original notarized OSS after award of contract but before payment.</p>
<p>Additional Requirements for Infrastructure Projects</p>	<p>Philippine Contractors Accreditation Board (PCAB) License</p> <p>Net Financial Contracting Capacity (NFCC), If ABC is above PhP500,000.00</p>

The following additional commitments in the OSS shall provide the needed safeguards to the PE considering that submission of documentary requirements may be done after contract award and that bid, performance and warranty securities are not required under this procurement modality:

²² The OSS form for Emergency Procurement under the *Bayanihan* Act can be accessed through this link: https://www.gppb.gov.ph/assets/pdfs/GPPB%20Online%20Portal_PEs_updated.pdf

²³ Item 4.3 of GPPB Circular No. 01-2020.

²⁴ Item 4.2 of GPPB Circular No. 01-2020.

- a. to submit all the mandatory documentary requirements at anytime before award of contract or after award but prior to payment of contract;²⁵
- b. to perform and deliver all of the obligations and undertakings, including the warranty provisions;²⁶ and
- c. to warrant that for the period stipulated the object of the contract shall be free from defects and conform to quality standards and technical specifications of the said contract.²⁷

Failure in any of the foregoing is sufficient ground for the PE to initiate Blacklisting²⁸ Moreover, if advance payment was made and the contract awardee is unable to comply with any of its contractual obligations, the same constitutes sufficient ground to be criminally liable for Swindling (*Estafa*) under Article 315 of the RPC.²⁹ In addition, the PE may impose other fines or penalties imposed by other relevant laws, rules and regulations, or as agreed upon in the contract.

Direct Purchase from Local Farmers

One of the significant features of the Circular is the provision on direct purchase from local farmers.³⁰ This was included to help our local farmers who are left with excess supply of farm and agricultural products as a result of the Enhanced Community Quarantine (ECQ) and channel these supplies to government agencies who are tasked with the provision of basic necessities to those affected by the imposition of the ECQ.

PEs intending to directly procure from a local farmer need only to ask the submission of any of the following: (i) a certification that the farmer is in the Registry System for Basic Sectors in Agriculture (RSBSA); (ii) RSBSA identification card; or (iii) Barangay Certification that the supplier is a *bonafide* farmer.³¹

On the other hand, PEs may likewise purchase from farmers' associations or cooperatives in accordance with the procedure and requirements provided in the Circular.

In either case, PEs shall be guided by the following in the determination of the prices of agricultural products: (i) the average prevailing farm gate price from the province, if purchased directly from the farmers; (ii) the market price, if purchased from farmers' association or cooperative; or (iii) the recommended retail price by the local price coordinating council for commodities sold by capable farmers, and farmers' associations or cooperatives in their respective provinces, municipalities and cities.³²

The Circular further streamlines the documentary requirements when dealing directly with local farmers. Accordingly, the disbursement voucher prepared by the PE needs only to be signed by the farmer-supplier and the same shall serve as both the (i) delivery invoice showing the quantity, description of the articles, unit and total value of the items delivered and (ii) proof of actual delivery and receipt of payment.³³

²⁵ Item 4 of the OSS for Emergency Procurement under the *Bayanihan* Act.

²⁶ Item 5 of the OSS for Emergency Procurement under the *Bayanihan* Act.

²⁷ Item 6 of the OSS for Emergency Procurement under the *Bayanihan* Act.

²⁸ Pursuant to the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants, issued through GPPB Resolution No. 40-2017 dated 21 December 2017.

²⁹ Item 10.1 of GPPB Circular No. 01-2020.

³⁰ Item 6 of GPPB Circular No. 01-2020.

³¹ Item 6.2 of GPPB Circular No. 01-2020.

³² Item 6.3 of GPPB Circular No. 01-2020.

³³ Item 6.4 of GPPB Circular No. 01-2020.

Special Repeat Order

Another important feature of the Circular is the authority given to PEs to make a Special Repeat Order in consideration of the urgent necessity of the items to be procured, difficulty in accurately estimating the quantity needed, and the limited funds available at the time of original purchase.

Accordingly, PEs are given the option to avail of a Special Repeat Order under the following conditions:

- a. Limited to Goods³⁴ covered under the *Bayanihan* Act and reiterated in Item 2.2 of the Circular;
- b. The Goods were procured under a contract previously awarded through any mode of procurement, provided that the Notice of Award (NOA) was issued within the last six (6) months;
- c. The unit prices must be the same or lower than those in the original contract. In the case of same unit price, the PE must ensure that there is no lower price available in the market;
- d. There has been a partial delivery, inspection and acceptance of the goods under a contract previously awarded; and
- e. The total amount shall not exceed one hundred percent (100%) of the original contract. (Item 8.1 of GPPB Circular No. 01-2020)

After the PE determines that it needs to re-order the Goods it previously procured, it shall conduct a study to determine the capability of the suppliers to deliver the required quantity and the prevailing market price of the Goods to be reordered. If there is no lower price available in the market and the current supplier can deliver at the same or lower price as in the original contract, the PE shall commence direct negotiation for the procurement of the additional Goods.³⁵

Upon compliance with the foregoing, the PE shall issue the NOA indicating that the award is a Special Repeat Order and enter into contract.³⁶ No advance payment shall be allowed for the Special Repeat Order.³⁷

GPPB Online Portal for Emergency Procurement under the *Bayanihan* Act

The BAC, through its Secretariat, shall post for information purposes procurement data on the: (i) PE's website or if none, any conspicuous place in its premises; and (ii) GPPB online portal for Emergency Procurement under the *Bayanihan* Act.

³⁴ Refers to (a) Goods, which may include personal protective equipment such as gloves, gowns, masks, goggles, face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines; testing kits; and such other supplies or equipment as may be determined by the DOH and other relevant government agencies; (b) Goods and services for social amelioration measures in favor of affected communities; (c) Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities; (d) Establishment, construction, and operation of temporary medical facilities; (e) Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and (f) Ancillary services related to the foregoing.

³⁵ Item 8.2 of GPPB Circular No. 01-2020.

³⁶ Item 8.3 of GPPB Circular No. 01-2020.

³⁷ Item 8.4 of GPPB Circular No. 01-2020.

In light of the posting limitations in the PhilGEPS system, Item 9.0 of the Circular authorizes the establishment of a GPPB online portal to promote accountability and transparency in the conduct of Emergency Procurement under the *Bayanihan Act*.

The GPPB online portal shall also be the source of data or information to be used by the GPPB and its Technical Support Office to comply with the reportorial requirements under the *Bayanihan Act*.

Accordingly, all PEs are directed to post on the GPPB online portal the following information relative to the Procurement Projects undertaken through Emergency Procurement under the *Bayanihan Act*.³⁸

- a. Updated APP;
- b. Project Name;
- c. ABC;
- d. Contract period;
- e. Name of Winning Supplier, Distributor, Manufacturer, Contractor or Consultant;
- f. Amount of Contract as Awarded;
- g. NOA;
- h. Date of award and acceptance; and
- i. Contract or Purchase Order.

The posting shall include those procured through the Department of Budget and Management-Procurement Service either under Negotiated Procurement (Agency-to-Agency)³⁹ for the purchase of Common-Use Supplies and Equipment (CSEs) or as a procurement agent⁴⁰ for non-CSEs.

In this regard, PEs shall identify their principal and alternate authorized representatives for posting of the required procurement information. The name, position and official email address of the said representatives shall be submitted to the GPPB through GPPBonlineregistration@gppb.gov.ph.

The authorized representatives shall register through this link <https://www.cognitofirms.com/GPPB1/ProcuringEntity>. The log-in information shall be used to access the Awarded Contracts portal through this link <https://www.cognitofirms.com/GPPB1/AwardedContracts> or you may go to our website and <https://www.gppb.gov.ph/GPPBonlineportal.php>

Administrative and Criminal Penalties

PEs are authorized to impose the following penalties for the corresponding violations:

Violation	Sanction
Failure of the supplier, distributor, manufacturer, contractor, or consultant to submit the documentary requirements, faithfully perform or	Blacklisting for a period of two (2) years in all government procurement activities following the provisions under the Uniform Guidelines for

³⁸ The Advisory on the GPPB Online Portal for Emergency Procurement under the *Bayanihan Act* was sent on 13 April 2020.

³⁹ Section 53.5 of the 2016 IRR of RA No. 9184.

⁴⁰ Section 7.3.3(a) of the 2016 IRR of RA No. 9184 provides that [i]n order to hasten project implementation, PEs which may not have the proficiency or capability to undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by requesting other agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules.

deliver its obligations and undertakings in the contract, including compliance with the warranty clause.	Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants ⁴¹
Failure to perform or deliver any of the obligations and undertakings in the contract in case advance payment was made or given	Criminal liability for Swindling (<i>Estafa</i>) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of the RPC
Delay in the completion or delivery of the Procurement Project through fault of the supplier, distributor, manufacturer, contractor, or consultant	At least one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay. In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the PE may cancel the contract. Should the PE decide not to cancel the contract, the imposition of liquidated damages shall be continued.
Refusal to prioritize and accept contracts for materials and services necessary to promote the declared national policy under the <i>Bayanihan</i> Act	a. Imprisonment of two (2) months; or b. Fine of not less than Ten Thousand Pesos (PhP10,000.00) but not more than One Million Pesos (PhP1,000,000.00); or c. Both, at the discretion of the court

Aside from the abovementioned, the PE may impose other fines or penalties under other relevant laws, rules and regulations, or as agreed by the parties in the contract.

Advance Payment

To facilitate contract implementation of Procurement Projects under this Circular, advance payment for mobilization cost not exceeding fifteen percent (15%) of the contract amount shall be allowed.⁴² Any increase in the advance payment must be approved by the President pursuant to Section 88 of Presidential Decree No. 1445 or the Government Auditing Code of the Philippines. In this regard, the GPPB likewise

⁴¹ Issued through GPPB Resolution No. 40-2017 dated 21 December 2017.

⁴² Pursuant to Memorandum Order (MO) No. 172, s. 2005, subject to any increase that may be approved by the President pursuant to Section 88 of Presidential Decree No. 1445 or the "Government Auditing Code of the Philippines."

recommended for approval of the President the increase in the allowable advance payment to Thirty Percent (30%) of the contract amount.⁴³ Note, however, that the same is subject to the approval of the President of the Philippines, and until the same is made, advance payment remains to be at 15%.

Meanwhile, a single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a PE for services where the requirement of down payment is a standard industry practice such as in the lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities.⁴⁴

Frequently Asked Questions

To further guide the PEs in the application of Emergency Procurement under the *Bayanihan Act*, we have prepared the following for easy reference:

(1) **What is “Emergency Procurement under the *Bayanihan Act*?”**

Emergency Procurement under the *Bayanihan Act* is the procurement modality to be used for all procurement of goods and services exempted from the provisions of RA No. 9184 pursuant to RA No. 11469 and following the procedure and requirements under GPPB Circular No. 01-2020.

(2) **Can PEs apply the rules on Emergency Procurement under the *Bayanihan Act* for ongoing procurement activities using the rules under Negotiated Procurement (Emergency Cases)?**

No. Procurement activities undertaken pursuant to Section 53(b) of RA No. 9184 and Section 53.2 of its 2016 IRR shall remain to be covered by said rules unless the same is cancelled and a new procurement covering the projects under the *Bayanihan Act* is commenced on or after 12 April 2020 following the Circular.

(3) **What are the Procurement Projects covered by the Emergency Procurement under the *Bayanihan Act*?**

All Procurement Projects covered by RA No. 11469, as reiterated under Item 2.2 of the Circular, may be procured under the Emergency Procurement under the *Bayanihan Act*, as follows:

- a. Goods, which may include personal protective equipment such as gloves, gowns, masks, goggles, face shields; surgical equipment and supplies; laboratory equipment and its reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines; testing kits; and such other supplies or equipment as may be determined by the DOH and other relevant government agencies;
- b. Goods and services for social amelioration measures in favor of affected communities;

⁴³ Approved through issuance of GPPB Resolution No. 01-2020, dated 6 April 2020 and published on 12 April 2020 in the Philippine Star.

⁴⁴ Section 1 of MO No. 172.

- c. Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities;
- d. Establishment, construction, and operation of temporary medical facilities;
- e. Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and
- f. Ancillary services related to the foregoing.

(4) What is the scope of application of the rules for Emergency Procurement under the *Bayanihan Act*?

It shall apply to all Procuring Entities using public funds.

Procuring Entities shall refer to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the Government of the Philippines, National Government Agencies, including Government-Owned and/or Controlled Corporations, Government Financing Institutions, State Universities and Colleges, and Local Government Units may resort Emergency Procurement under the *Bayanihan Act* (Item 2.1 of GPPB Circular No. 01-2020)

(5) When is the effectivity of the Guidelines on the Emergency Procurement under the *Bayanihan Act* (GPPB Circular No. 01-2020)?

It shall take effect immediately upon its publication on **12 April 2020 until 23 June 2020** or three (3) months from 25 March 2020, the effectivity of the *Bayanihan Act*. (Item 11 of GPPB Circular No. 01-2020)

(6) What is the difference between Emergency Procurement under the *Bayanihan Act* and Negotiated Procurement (Emergency Cases)?

Emergency Procurement under the <i>Bayanihan Act</i>	Negotiated Procurement (Emergency Cases)
Basis	
RA No. 11469; GPPB Resolution No. 06-2020; and Circular No. 01-2020	Section 53(b) of RA No. 9184; Section 53.2 of the 2016 IRR of RA No. 9184; the Consolidated Guidelines on Alternative Methods of Procurement or Annex “H” of the 2016 IRR of RA No. 9184; GPPB Resolution Nos. 03-2020; and 05-2020
Application	
Specific items covered under the <i>Bayanihan Act</i> :	Instances or conditions justifying its application:
a. Goods, which may include personal protective equipment such as gloves, gowns, masks, goggles, face shields; surgical equipment and supplies; laboratory equipment and its	a. in case of imminent danger to life or property during a state of calamity b. when time is of the essence arising from actual or man-made calamities or other causes where

<p>reagents; medical equipment and devices; support and maintenance for laboratory and medical equipment, surgical equipment and supplies; medical supplies, tools, and consumables such as alcohol, sanitizers, tissue, thermometers, hand soap, detergent, sodium hydrochloride, cleaning materials, povidone iodine, common medicines; testing kits; and such other supplies or equipment as may be determined by the DOH and other relevant government agencies;</p> <p>b. Goods and services for social amelioration measures in favor of affected communities;</p> <p>c. Lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities;</p> <p>d. Establishment, construction, and operation of temporary medical facilities;</p> <p>e. Utilities, telecommunications, and other critical services in relation to operation of quarantine centers, medical relief and aid distribution centers and temporary medical facilities; and</p> <p>f. Ancillary services related to the foregoing. (Item 2.2 of the Circular)</p>	<p>immediate action is necessary to prevent damage to or loss of life or property; or</p> <p>c. to restore vital public services, infrastructure facilities and other public utilities.</p> <p>The instances or situations where the foregoing conditions may also be applied in the provision of immediate response and initial recovery steps to avoid loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and environmental degradation.</p> <p>It also includes the lease of real property or venue for use as quarantine centers, evacuation sites, medical relief and aid distribution locations, warehousing facilities, or similar temporary disaster or emergency response facility (GPPB Resolution No. 03-2020)</p>
Period of Application	
<p>From the effectivity of the Circular, which is immediately upon its publication on 12 April 2020 until the 23 June 2020 or three (3) months from 25 March 2020, the effectivity of the <i>Bayanihan</i> Act (Item 11 of the Circular)</p>	<p>No specific period; may be applied from effectivity of the 2016 IRR of RA No. 9184 and related issuances</p>

(7) Is an approved APP required prior to the conduct of Emergency Procurement under the *Bayanihan* Act?

As a general rule yes, however, in view of the urgent necessity of the procurement covered under the *Bayanihan* Act, the PE may commence with the procurement even without an approved APP, provided there is a document or certification from the budget officer or equivalent position showing that there is a budget for the purpose.

The APP shall be approved thereafter and posted on the PE's website and on the GPPB online portal for Emergency Procurement under the *Bayanihan Act* on or before 30 September 2020. (Item 9 of GPPB Circular No. 01-2020)

(8) What are the delegations of authority allowed under Emergency Procurement under the *Bayanihan Act* in order to efficiently and expeditiously deal with the emergency sought to be addressed under the *Bayanihan Act*?

The HoPE is encouraged to delegate the following authorities:

- a. to act as HoPE, particularly in the approval of the APP and award of contract; and (Item Nos. 3.2 and 3.5 of GPPB Circular No. 01-2020)
- b. to directly negotiate or conduct the procurement activities to the End-user unit or any other appropriate bureau, committee, support or procuring unit (Item 3.3 of GPPB Circular No. 01-2020)

(9) What are the mandatory documentary requirements for Emergency Procurement under the *Bayanihan Act*?

The same mandatory documentary requirements for Negotiated Procurement (Emergency Cases), as may be applicable: (Item 4.1 of GPPB Circular No. 01-2020)

- a. Mayor's or Business Permit;

For projects with an ABC above PhP500,000.00:

- b. Income Tax Returns (Annual Income Tax Return of the preceding tax year) OR Business Tax Returns (Value Added Tax or Percentage Tax Return covering the previous six months);
- c. An original copy of the OSS, which shall be submitted **at any time before award of contract**

Additional requirements for Infrastructure Projects:

- d. PCAB License; and
- e. NFCC for Infrastructure Projects with an ABC above PhP500,000.00.

However, PEs shall use the OSS with the stipulations provided in Appendix 1 of GPPB Circular No. 01-2020. (Item 4.3 of GPPB Circular No. 01-2020)

(10) When should the documentary requirements for Emergency Procurement under the *Bayanihan Act* be submitted?

All documentary requirements, except the OSS, must be submitted at any time before award of contract or after award but before payment. (Item 4.2 of GPPB Circular No. 01-2020)

The OSS must be submitted at any time before award of contract. (Item 4.3 of GPPB Circular No. 01-2020)

(11) **What if the local government unit has not issued the Mayor's or Business Permit, is the PE allowed to accept a substitute?**

Yes, the PE is allowed to accept the recently expired Mayor's or Business Permit and the Official Receipt as proof of application and payment for the renewal of the permit will suffice, subject to submission of the Mayor's Permit after award of contract. (Item 4.4 of GPPB Circular No. 01-2020)

(12) **Can the PE accept an unnotarized OSS given the difficulty of securing the services of a notary public under a State of Emergency or Calamity or Enhanced Community Quarantine?**

Yes, an unnotarized OSS may be accepted by the PE subject to compliance therewith **after award of contract but before payment.** (Item 4.3 of GPPB Circular No. 01-2020)

(13) **Are bid, performance and warranty securities required for Emergency Procurement under the *Bayanihan* Act?**

No. Instead of the foregoing securities, the bidder is required to submit the OSS provided in Appendix 1 of the Circular, which includes additional commitment, to wit:

- a. submit all the mandatory documentary requirements at anytime before award of contract or after award but prior to payment;
- b. perform and deliver all of the obligations and undertakings, including the warranty provisions; and
- c. warrant that for the period stipulated the object of the contract shall be free from defects and conform to quality standards and technical specifications of the said contract.

Failure in any of the foregoing shall be a ground for Blacklisting under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants (Item 10.1.a of GPPB Circular No. 01-2020)

Moreover, if advance payment was made, failure to perform any of the contractual obligations shall be sufficient grounds to constitute criminal liability for Swindling (*Estafa*) pursuant to Article 15 of the Revised Penal Code. (Item 10.1.b of GPPB Circular No. 01-2020)

This is in addition to the imposition of liquidated damages and other fines and penalties under other relevant laws, rules and regulations, or as agreed by the parties in the contract. (Item 10.2 of GPPB Circular No. 01-2020)

(14) **Can PEs directly purchase agricultural products from local farmers?**

Yes. PEs directly procuring from a local farmer need only to ask for submission of any of the following, at any time before award or after award but before payment:

- a. a certification that the farmer is in the RSBSA;
- b. RSBSA identification card; or
- c. Barangay Certification that the supplier is a *bonafide* farmer. (Item 6.2 of GPPB Circular No. 01-2020)

The PE shall prepare a disbursement voucher, which shall be signed by the farmer to serve as the delivery invoice showing the quantity, description of the articles, unit and total value of the items delivered as well as the proof of actual delivery and receipt of payment. (Item 6.4 of GPPB Circular No. 01-2020)

(15) Can PEs procure from foreign bidders pursuant to Emergency Procurement under the *Bayanihan* Act and if so, what are documents required from them?

Yes. For foreign suppliers, the equivalent document in their jurisdiction would suffice consistent with Section 23.2 of the 2016 revised IRR of RA No. 9184. (Item 3.4 of GPPB Circular No. 01-2020)

(16) What if no one supplier can deliver the needed quantity, can PEs procure from various suppliers? If yes, will this be considered Splitting of Contracts?

If after conducting initial market scanning or scoping, it is found that no one supplier is able to provide the total required quantity, PEs are allowed to procure from several sources and the same shall not be considered as Splitting of Contracts. (Item 3.1 of GPPB Circular No. 01-2020)

(17) Can PEs resort to Repeat Order from previously awarded suppliers?

Yes. Once the PE determines, after conducting a market survey, that there is no other supplier that can offer the Goods to be reordered at a lower price and that the previously awarded supplier can deliver the Goods at the same or lower price as in the original contract, the PE is given the option to avail of a Special Repeat Order under the following conditions:

- a. Limited to Goods covered under the *Bayanihan* Act and reiterated in Item 2.2 of the Circular;
- b. The Goods were procured under a contract previously awarded through any mode of procurement, provided that the Notice of Award (NOA) was issued within the last six (6) months;
- c. The unit prices must be the same or lower than those in the original contract. In the case of same unit price, the PE must ensure that there is no lower price available in the market;
- d. There has been a partial delivery, inspection and acceptance of the goods under a contract previously awarded; and
- e. The total amount shall not exceed one hundred percent (100%) of the original contract. (Item 8.1 of GPPB Circular No. 01-2020)

(18) Is there a posting requirement for projects procured using the Emergency Procurement under the *Bayanihan* Act?

Yes. The BAC, through its Secretariat shall post for information purposes procurement data on the following:

- a. PE's website or if none, any conspicuous place in its premises; and
- b. GPPB online portal for Emergency Procurement under the *Bayanihan* Act.

In light of the posting limitations in the PhilGEPS platform, the GPPB online portal was created where PEs are required to post the following information relative to the Procurement Projects undertaken through Emergency Procurement under the *Bayanihan* Act:

- a. Updated APP;
- b. Project Name;
- c. ABC;
- d. Contract period;
- e. Name of Winning Supplier, Distributor, Manufacturer, Contractor or Consultant;
- f. Amount of Contract as Awarded;
- g. NOA;
- h. Date of award and acceptance; and
- i. Contract or Purchase Order.

The posting also includes those procured through the Department of Budget and Management-Procurement Service either under Negotiated Procurement (Agency-to-Agency) for the purchase of Common-Use Supplies and Equipment or as a procurement agent pursuant to Sections 53.5 and 7.3.3(a) of the 2016 IRR of RA No. 9184, respectively.

In this regard, the PEs are directed to submit the name, position and official email address of its principal and alternate representatives at: GPPBonlineportal@gppb.gov.ph.

For the PE representatives to register on the GPPB online portal through: <https://www.cognitofirms.com/GPPB1/ProcuringEntity>.

Once approved, PEs may now post the required procurement information through: <https://www.cognitofirms.com/GPPB1/AwardedContracts>.

(19) What are the sanctions against erring procurement contract awardees?

The following penalties may be imposed for the corresponding violations:

Violation	Sanction
Failure of the supplier, distributor, manufacturer, contractor, or consultant to submit the documentary requirements, faithfully perform or deliver its obligations and undertakings in the contract, including compliance with the warranty clause.	Blacklisting for a period of two (2) years in all government procurement activities following the provisions under the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors, and Consultants (Issued through GPPB Resolution No. 40-2017 dated 21 December 2017)

<p>Failure to perform or deliver any of the obligations and undertakings in the contract in case advance payment was made or given</p>	<p>Criminal liability for Swindling (<i>Estafa</i>) or the commission of fraud with unfaithfulness or abuse of confidence through misappropriating or converting any payment received by a person or entity under an obligation involving the duty to deliver certain goods or services, to the prejudice of the public and the government of the Philippines pursuant to Article 315 of the Revised Penal Code</p>
<p>Delay in the completion or delivery of the Procurement Project through fault of the supplier, distributor, manufacturer, contractor, or consultant</p>	<p>At least one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion for every day of delay.</p> <p>In case the total sum of liquidated damages reaches ten percent (10%) of the total contract price, the PE may cancel the contract.</p> <p>Should the PE decide not to cancel the contract, the imposition of liquidated damages shall be continued.</p>
<p>Refusal to prioritize and accept contracts for materials and services necessary to promote the declared national policy under the <i>Bayanihan Act</i></p>	<p>d. Imprisonment of two (2) months; or</p> <p>e. Fine of not less than Ten Thousand Pesos (PhP10,000.00) but not more than One Million Pesos (PhP1,000,000.00); or</p> <p>f. Both, at the discretion of the court</p>

Aside from the abovementioned, the PE may impose other fines or penalties under other relevant laws, rules and regulations, or as agreed by the parties in the contract. (Item 10 of GPPB Circular No. 01-2020)

(20) **Can PEs make advance payment for procurement covered by Emergency Procurement under the *Bayanihan Act*?**

Yes, advance payment is allowed for mobilization cost not exceeding fifteen percent (15%) of the contract amount pursuant to Memorandum Order No. 172, s. 2005, subject to any increase that may be approved by the President pursuant to Section 88 of Presidential Decree No. 1445 or the "Government Auditing Code of the Philippines. (Item 7.1 of GPPB Circular No. 01-2020)

In this regard, the GPPB recommended for approval of the President increase in the allowable advance payment to Thirty Percent (30%) of the contract amount. Note, however, that the same is subject to the approval of the President of the

Philippines, and until the same is made, advance payment remains to be at 15%. (GPPB Resolution No. 06-2020)

Meanwhile, a single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a PE for services where the requirement of down payment is a standard industry practice such as in the lease of real property or venue for use to house health workers or serve as quarantine centers, medical relief and aid distribution locations or temporary medical facilities. (Item 7.2 of GPPB Circular No. 01-2020)

For the information and guidance of all.



ROWENA CANDICE M. RUIZ
Executive Director V

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