

NPM No. 007-2020

15 December 2020

HEADS OF PROCURING ENTITIES

Re: Effectivity of *Bayanihan* Procurement Rules issued pursuant to Republic Act No. 11494 or the *Bayanihan* to Recover as One Act

Dear Sir/Madam:

In light of the end of the effectivity of Republic Act (RA) No. 11494 or the *Bayanihan* to Recover as One Act (*Bayanihan 2*) on 19 December 2020,¹ unless later extended by an Act of Congress, we are issuing this clarificatory opinion to guide all Procuring Entities (PEs) in the procurement of Goods; general support services, which includes non-personal or contractual services and related or analogous services; Infrastructure Projects; and Consulting Services that are directly related to the mitigation and containment of the transmission of COVID-19 ("COVID-19 related items").

At the outset, it must be emphasized that the procurement rules authorized under Government Procurement Policy Board (GPPB) Resolution Nos. 18-2020² and 19-2020³ were made pursuant to Sections 4(u) and 4(ooo) of RA No. 11494. Accordingly, the same may be utilized until **19 December 2020** pursuant to Section 18 of the *Bayanihan 2*. Applying this, **Procuring Entities have until 19 December 2020 to issue a Notice of Award for procurement activities conducted pursuant to the foregoing Resolutions.**

This does not mean that PEs can no longer procure COVID-19 related items after 19 December 2020 as only the procurement rules authorized pursuant to RA No. 11494 have limited effectivity. **After the said date, PEs may procure COVID-19 related items pursuant to the provisions of RA No. 9184, taking into consideration the expiration of the validity of funds under the respective Budget laws.**

Relatedly, PEs are allowed to resort to Negotiated Procurement - Emergency Cases (Emergency Procurement)⁴ to procure COVID-19 related items in accordance with Item 3.2 of Joint Memorandum Circular No. 1 of the Commission on Audit and the GPPB.⁵ Emergency Procurement⁶ may be undertaken under any of the following instances:

- a. in case of imminent danger to life or property during a state of calamity;

¹ Sec. 18. *Effectivity*. - Except as otherwise specifically provided herein, this Act shall be in full force and effect until the next adjournment of the Eighteenth Congress on December 19, 2020. This Act shall take effect immediately upon its publication in a newspaper of general circulation or in the Official Gazette: Provided, That Section 4(cc) of this Act shall be deemed to be in effect since Republic Act No. 11469 expired.

² Dated 16 September 2020 and published in the Philippine Star on 26 September 2020.

³ Dated 21 September and published in the Philippine Star on 26 September 2020.

⁴ Under Section 53(b) of RA No. 9184, Section 53.2 of its 2016 IRR and associated issuances.

⁵ "Emergency Procurement by the Government during a State of Public Health Emergency Arising from the Coronavirus Disease 2019 (COVID-19)" dated 26 March 2020.

⁶ As amended by GPPB Resolution No. 03-2020 dated 9 March 2020 and published in the Philippine Daily Inquirer on 13 March 2020.

- b. when time is of the essence arising from actual or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property; or
- c. to restore vital public services, infrastructure facilities, and other public utilities.

The instances or situations where the foregoing conditions may be applied include 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.

Emergency Procurement covers Goods, Civil Works projects, and Consulting Services and the lease of real property or venue such as those for use as quarantine centers, evacuation sites, medical relief, and aid distribution locations, warehousing facilities, or similar temporary disaster or emergency response facility are included as well.

Moreover, the determination of the existence of all the legal conditions warranting resort to Emergency Procurement under RA No. 9184 or any of the alternative methods of procurement falls solely within the ambit of the authority and accountability of 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.

In fine, the lapse of the effectivity of the *Bayanihan 2* does not preclude PEs from procuring COVID-19 related items following the provisions of RA No. 9184, its IRR, and related issuances.

For the information and guidance of all.



ROWENA CANDIDO MURIZ
Executive Director V