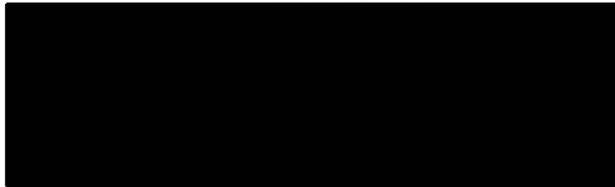


**NPM No. 084-2016**

15 November 2016




**Re: Adjacent or Contiguous**

Dear [REDACTED]:

This refers to your letter seeking clarification on whether the additional works that you plan to procure may be classified as “adjacent or contiguous” to your on-going infrastructure project so that you can procure the same through the corresponding alternative method of procurement.

It is represented that the City of Manila previously bid an infrastructure project – the construction of a school building. Additional works are planned, particularly described as “**Concrete Works** – *concreting of roof beams and columns*, **Steel Works** – *installation of steel trusses*, and **Roofing Works** – *installation of pre-painted long span roofing*.” Thus, you ask if you can procure the same through the alternative modality of Adjacent and Contiguous Procurement within the contemplation of Section 53(d) of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

We wish to note that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) only render policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations. It has no authority to decide for and in behalf of a procuring entity, nor dictate upon the procuring entity how to decide relative to its procurement activities. Hence, this office has consistently refrained from passing upon decisions of the BAC or even by the Head of the Procuring Entity (HOPE) relative to the application of and compliance with RA 9184 and its revised IRR. It is in this wise that we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations pertinent to the issue presented.

At the outset, it seems that the additional works described as Concrete, Roofing, and Steel Works should be necessarily part of the original infrastructure project for the construction of a school building, which must already be usable and structurally sound even without the additional works to be procured. Thus, we wish to remind you of the prohibition on splitting of contracts under Section 54.1<sup>1</sup> of the IRR of RA 9184. 

<sup>1</sup> Splitting of contracts means the division or breaking up of GOP contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or

Assuming arguendo that the subject contract to be negotiated are only additional works to the foregoing, it may be considered as adjacent or contiguous works under Section 53.4 of the IRR of RA 9184 Negotiated Procurement (Adjacent or Contiguous) if the following conditions are complied with, thus:


- (a) the original contract is the result of a Competitive Bidding;
- (b) the subject contract to be negotiated has similar or related scopes of work;
- (c) it is within the contracting capacity of the contractor/consultant;
- (d) the contractor consultant uses the same prices or lower unit prices as in the original contract less mobilization cost;
- (e) the amount involved does not exceed the amount of the ongoing project; and,
- (f) the contractor/consultant has no negative slippage/delay: Provided, further, That negotiations for the procurement are commenced before the expiry of the original contract.

In fine, Negotiated Procurement under the Adjacent or Contiguous modality, sanctioned by Section 53.4 of the IRR, may be resorted to only when all the above-mentioned conditions are complied with and the determination of the existence of the conditions warranting resort to any of the alternative methods of procurement falls solely within the ambit of the authority and accountability of the Procuring Entity.

Moreover, the phrase "adjacent or contiguous" refers to projects that are in actual physical contact with each other in the case of infrastructure projects. Thus, the physical connection of the two (2) projects should be actual and not superficial. The objective of this policy is to take advantage of the economy and efficiency in engaging the contractor for the on-going project, and ensure that the two structures are soundly connected.<sup>2</sup>

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANJIAGO~~  
Executive Director 

//lrd4 ~~exo~~

---

circumventing the requirements of law and the IRR, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

<sup>2</sup> NPM 052-2015, 9 October 2015.