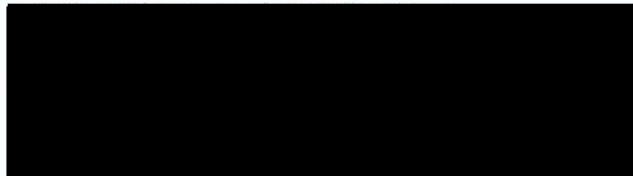




Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 17-2015

7 October 2015



Re: Armed Forces of the Philippines Engineering Equipment Acquisition Project (AFP EEA Project)

Dear [REDACTED]

This refers to your letter requesting for clarification on issues attending the Negotiated Procurement (Emergency Cases)¹ of AFP EEA Project that has a total Approved Budget for the Contract (ABC) of PhP 607,000,000.00, which is divided into six (6) lots as shown below:

Lot	Description	Approved Budget for the Contract	Status
1	Dozer and Grader	PhP 212,240,000.00	Failed Bidding
2	Road Roller	PhP 50,890,000.00	For issuance of NOA
3	Dump Trucks	PhP 163,030,000.00	Failed Bidding
4	Tractor Head & Trailer	PhP 29,600,000.00	Failed Bidding
5	Back Hoe Loaders	PhP 125,800,000.00	For issuance of NOA
6	Excavator, Skid Sterr, Loader & Crane	PhP 25,440,000.00	For issuance of NOA
Total		PhP 607,000,000.00	

It is represented that the DND Special Bids and Awards Committee (SBAC) conducted the AFP EEA Project through Negotiated Procurement under the Emergency Cases modality, whereby the SBAC adopted a modified negotiated procurement procedure. Suppliers of heavy equipment were invited to participate in the negotiation but were made to submit all legal, financial, and technical documents prescribed in public bidding, which were

¹ Section 53.2 Emergency Cases. In case of imminent danger to life or property during a state of calamity, or 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, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP. (IRR of RA 9184)

sealed and opened simultaneously on 10-12 February 2015 using non-discretionary “pass/fail” criterion. As a result, three (3) of the six (6) lots were awarded to one supplier and awaiting the issuance of Notice of Award. On the other hand, a failure of bidding was declared for the other three (3) lots.

However, in the course of the procurement process, the Government Procurement Policy Board (GPPB) issued Resolution No. 01-2015² revoking GPPB Resolution No. 34-2013 and lifted the authority granted to Procuring Entities (PE) to procure goods and infrastructure projects for the purpose of providing rescue, recovery relief, and/or rehabilitation for, and continue to provide basic services to victims in areas affected by Typhoon Yolanda through Negotiated Procurement under Section 53.2 (Emergency Cases) of the IRR of RA 9184 with an ABC of at least Five Hundred Million Pesos (PhP 500,000,000.00) *sans* GPPB approval. Thus, our guidance is sought on the following matters:

1. Whether the NOA for Lots 2, 5, and 6 can still be issued to the winning bidder despite the revocation of GPPB Resolution No. 34-2013; and
2. Whether Lots 1, 3 and 4 can still be pursued through Negotiated Procurement.

At the outset, it bears stressing that in the case of a procurement activity that is divided into several lots, where each awarded lot gives rise to a separate contract, the ABC for each lot becomes the reference to determine whether it falls within the coverage of Executive Order (EO) No. 423,³ as amended, which requires GPPB’s approval for contracts with at least PhP 500 Million that will be procured under Alternative Methods of Procurement. Considering that EO 423 speaks of “government contracts,” it refers to each contract to be awarded, and should the corresponding ABC for each contract does not exceed PhP 500 Million, the approval of the GPPB need not be secured.

In this case, we assume that DND allowed bidders to submit an offer in any of the lots, thereby allowing a bidder to be awarded only one (1) lot or all the six (6) lots, since none of the ABC for each lot is at least PhP 500 Million, the DND may proceed with its chosen alternative modality without the GPPB’s approval as the budget for each lot did not fall within the ambit of EO 423. Additionally, even if GPPB Resolution No. 34-2013 is still in effect, the procurement activities mentioned will not need GPPB’s approval under Item (a) which states:

- a) REITERATE that GPPB approval is not necessary for government contracts procured through any of the alternative methods of procurement

² Dated 30 January 2015 and took effect on the same date.

³ E.O. 423 (Repealing E.O. 109-A dated September 18, 2003, Prescribing the Rules and Procedures on the Review and Approval of all Government Contracts to Conform with RA 9184) , as amended by E.O. 645 (Amending Section 4 of E.O. 423) provides that:

Section 4. Approval of Government Contracts entered into through alternative methods of procurement: Government Contracts involving an amount of **at least Php 500 Million** and the Head of the Procuring Entity has made a determination that it falls under any of the exceptions from public bidding or any of the alternative methods of procurement provided by law and applicable rules and regulations, an approval from the GPPB should first be secured stating therein that said government proposed procurement undertaking falls within the exceptions from public bidding and that the proposed specific alternative method of procurement is appropriate.

involving an Approved Budget for the Contract less than Five Hundred Million Pesos (PhP 500,000,000.00).

We wish to emphasize that the PE may resort to negotiated procurement under the Emergency Cases modality provided that it can establish and justify the existence of the conditions⁴ warranting its use. As we have previously opined, the accountability and responsibility in identifying the existence of such conditions rest with the Head of the Procuring Entity, upon recommendation of the Bids and Awards Committee.

We hope that the opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situation 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.)

~~DELLA S. SANTIAGO~~
Executive Director V

//SdR

⁴ *Supra*, note 1