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CIRCULAR 01-2009

20 January 2009

TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units

SUBJECT : Guidelines Clarifying the Procurement Activities which may be Undertaken Without an Issued Allotment

1.0 Purpose

This Circular is being issued to clarify the procurement procedures an agency may undertake prior to the receipt of the funds/allotment programmed for the purpose.

2.0 Coverage

- 2.1 All departments, bureaus, offices and agencies of the national government (NG) including state universities and colleges (SUCs).
- 2.2 Government-owned and/or controlled corporations (GOCCs) and local government units (LGUs), only when tapped as implementing units and recipients of fund transfers from the national government.

3.0 Definition of Terms

As used in this Circular, the following terms are defined, as follows:

- 3.1 *Allotment* – document issued by the Department of Budget and Management (DBM) which authorizes an agency to incur obligations for a specified amount as contained in a legislated appropriation. The allotment issued may either be through the Agency Budget Matrix (ABM) which covers the comprehensive release of specifically appropriated items in the agency's budget or through the Special Allotment Release Order (SARO).
- 3.2 *Annual Procurement Plan (APP)* - the requisite document that the agency must prepare to reflect the entire procurement activity (i.e., goods, services, civil works to be procured) that it plans to undertake within the calendar year. This document contains the following information:

- 3.2.1 Name of the procurement program/project;
- 3.2.2 Project management office or end-user unit;
- 3.2.3 General description of the procurement;
- 3.2.4 Procurement method to be adopted;
- 3.2.5 Time schedule for each procurement activity;
- 3.2.6 Source of fund; and,
- 3.2.7 Approved Budget for the Contract.

3.3 *Approved Budget for the Contract (ABC)* - refers to the following:

NGs including SUCs (referred to in Section 2.1)

3.3.1 For specifically appropriated items as reflected in the annual budget of the national government agency, the amount corresponding to either the **full cost** of a single year or multi-year program/project/activity. For multi-year projects, for which a Multi-Year Obligational Authority has been issued, the ABC shall be the amount reflected in the Multi-Year Obligational Authority.

3.3.2 For lump sum allocation of a department or agency, this corresponds to the allocation of the specific implementing unit as determined by the head of the department/agency.

GOCCs and LGUs (referred to in Section 2.2)

3.3.3 In the case of GOCCs, including government financial institutions as well as LGUs, the ABC represents the amount of fund transfers which they receive from a national government agency to implement a program/project/activity.

3.4 *Implementing Units (IUs)* - agencies or bureaus within a department of the national government, or a GOCC or LGU tasked to undertake a program/project/activity.

3.5 *Lump-sum Appropriations and Centrally Managed Items (CMIs)* - those items in the budget of agencies for which the Implementing Units and the specific amounts allocated for each have not been identified in the National Expenditure Program (NEP) or the General Appropriations Act (GAA).

3.6 *Multi-Year Projects (MYP)* - refers to budgetary programs/projects/activities which will take more than one (1) year to complete.

3.7 *Single Year Projects (SYPs)* - refers to programs/projects/activities which have an implementation period of not more than a year.

3.8 *Multi-Year Obligational Authority (MYOA)* - a document issued by DBM either for locally funded projects or foreign assisted projects implemented by agencies in order to authorize the latter to enter into multi-year contracts for the full project cost. A MYOA, which contains an annual breakdown of the full project cost, obligates agencies to

include in their budget proposal for the ensuing years the amount programmed for the said year(s).

- 3.9 *National Expenditure Program (NEP)* – the proposed national budget submitted by the President to Congress in accord with Section 22, Article VII of the Constitution. The NEP shall be the basis of the general appropriations bill, which upon its enactment, becomes the General Appropriations Act (GAA).

4.0 General Guidelines

- 4.1 Consistent with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A 9184), all government procurement shall be undertaken in accordance with the APP as approved by the head of the procuring entity.
- 4.2 To facilitate the immediate implementation of projects even pending approval of the GAA, the ABC shall be based on the budget levels under the NEP submitted to Congress.
- 4.3 For specifically appropriated projects, agencies can proceed with the procurement activities prior to issuance of the notice of award using as basis the NEP figures.
- 4.4 For lump-sum appropriations or CMIs under the agency's budget, the head of the agency shall identify and thereafter notify the IUs of the amount allocated for the projects they are to implement. On the basis of said notification, the heads of the respective IUs, as procuring entities, can proceed with the procurement activities prior to issuance of the notice of award.
- 4.5 For MYPs, for which the initial funding -- sourced from either the existing/current year's budget or the NEP -- is not sufficient to cover the total cost of the project, it is required that a MYOA must already have been issued in accord with DBM Circular Letter 2004-12 prior to commencement of any procurement activity.

Thus, the MYOA shall be a pre-requisite for procurement of a multi-year contract. All procurement activities should be within the total project cost and categories reflected in the MYOA issued by DBM for the said MYP.

- 4.6 As prescribed under Section 47, Chapter 8, Subtitle B, Title I, Book V of the Administrative Code of 1987, no contract involving the expenditure of public funds shall be entered into unless the proper accounting official of the procuring entity shall have certified as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.
- 4.7 The notice of award, regardless of whether the procurement is to be conducted through competitive bidding or any of the alternative methods of procurement, shall only be made under the following instances:

- 4.7.1 Upon receipt of the ABM or SARO for the full cost of the project; and
- 4.7.2 Upon receipt of actual cash transfer for GOCCs/LGUs.
- 4.8 The notice of award shall also be made within the bid validity period. Should it become necessary to extend the validity of bids and, if applicable, the bid securities, the procuring entity concerned shall request in writing all those who submitted bids for such extension before the expiration date. Bidders, however, shall have the right to refuse to grant such extension without forfeiting their bid security.
- 4.9 Pursuant to Section 41 of the IRR-A of R.A. 9184, the procuring entity reserves the right to declare a failure of bidding if the funds/allotment for the program/project/activity has been withheld or reduced through no fault of the procuring entity.

For transparency, procuring entities shall ensure that their bid documents expressly reserve their right to reject bids, declare a failure of bidding, and not to award the contract without incurring any liability if the funds/allotment for said program/project/activity has been withheld or reduced through no fault of its own. They are also encouraged to emphasize this reservation clause during pre-bid conference or submission of bids.

- 5.0** The provisions of GPPB Circular 02-2008 dated 01 August 2008 which are inconsistent with any of the provisions of this Circular are hereby revoked or modified accordingly.
- 6.0** This Circular shall take effect immediately.
- 7.0** For guidance and compliance.

(Original Signed)
ROLANDO G. ANDAYA, JR.
Chairperson