



Republic of the Philippines
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
CENTRAL OFFICE
Bonifacio Drive, Port Area, Manila

097.17 DPWH
04-29-2019

April 25, 2019

DEPARTMENT MEMORANDUM)


CIRCULAR NO. 38)
Series of 2019 04.29.19)

FOR / TO : Undersecretaries
Assistant Secretaries
Service Directors
Bureau Directors
Regional Directors
Heads of UPMOs
District Engineers
This Department

For information and guidance, attached is a copy of COMELEC Resolution No. 10511 promulgated on March 20, 2019 entitled, "**RULES AND REGULATIONS GOVERNING BAN ON PUBLIC WORKS AND RELEASE, DISBURSEMENT AND EXPENDITURES OF PUBLIC FUNDS, CONSTRUCTION OF PUBLIC WORKS, DELIVERY OF MATERIALS FOR PUBLIC WORKS AND ISSUANCE OF TREASURY WARRANTS AND SIMILAR DEVICES IN CONNECTION WITH THE MAY 13, 2019 AUTOMATED SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS**".

A copy of said COMELEC Resolution may also be downloaded from the **DPWH website: <http://dpwhweb>**. If an office cannot access the DPWH website, a hard copy may be obtained from the Records Management Division, HRAS, upon request.

For dissemination to all concerned.


B. ELIZABETH E. YAP, Ph.D., CESO II
Assistant Secretary for Support Services

End: COMELEC Resolution No. 10511

cc: Office of the Secretary

10.1.4 MKBA/RPE/RMB/MSV



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
EDUCATION AND INFORMATION DEPARTMENT

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**RULES AND REGULATIONS GOVERNING
BAN ON PUBLIC WORKS AND RELEASE,
DISBURSEMENT AND EXPENDITURES OF
PUBLIC FUNDS, CONSTRUCTION OF
PUBLIC WORKS, DELIVERY OF
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ISSUANCE OF TREASURY WARRANTS
AND SIMILAR DEVICES IN CONNECTION
WITH THE MAY 13, 2019 AUTOMATED
SYNCHRONIZED NATIONAL AND LOCAL
ELECTIONS.**

Abas, S.M.,	Chairman
Parreño, A.A.,	Commissioner
Guia, L.T.F.,	Commissioner
Guanzon, M.R.A.V.,	Commissioner
Inting, S.B.,	Commissioner
Casquejo, M.S.,	Commissioner
Kho, Jr., A.T.,	Commissioner

Promulgated: March 20, 2019

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RESOLUTION NO. 10511

The Commission on Elections, pursuant to the powers vested in it by the Constitution, the Omnibus Election Code, and other election laws, has **RESOLVED**, as it hereby **RESOLVES** to promulgate, the following rules and regulations to enforce the prohibitions provided under Section 261, subsections (v) and (w) of the Omnibus Election Code (OEC).

SECTION 1. Prohibition on Release, Disbursement or Expenditure of Public Funds. – Effective March 29, 2019 until May 12, 2019, no public official or employee, including barangay officials, and those of government-owned or controlled corporations and their subsidiaries shall release, disburse or expend any public funds for:

1) Any and all kinds of public works, except the following:

- a) Maintenance of existing and/or completed public works project: Provided, that not more than the average number of laborers or employees already employed therein during the six-month period immediately prior to March 29, 2019, shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work starting March 29, 2019 until May 12, 2019;

- b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before March 29, 2019: Provided, that for the purpose of this Section work under the so-called "takay" or "pakyaw" system shall not be considered as work by contract;
- c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before March 29, 2019: Provided, that the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and
- d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five (5) days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this Section.

The prohibition shall not apply to on-going public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them as provided for under Sec. 3 of this Resolution.

- 2) The Department of Social Welfare and Development and any other office in other departments of the government performing functions similar to said department, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said departments and offices of other departments shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on

Audit (COA) or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and

- 3) The Housing and Urban Development Coordinating Council and any other office in any department of the government performing functions similar to said department, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

SECTION 2. *Prohibition Against Construction of Public Works, Delivery of Materials for Public Works and Issuance of Treasury Warrants and Similar Devices.* - Effective March 29, 2019 until May 12, 2019, no person shall:

- 1) Undertake the construction of any public works, except for projects or works exempted in the preceding Section; or
- 2) Issue, use or avail of treasury warrants or any device undertaking future delivery of money, goods, or other things of value chargeable against public funds.

SECTION 3. *Submission to the Commission of lists of authorized public works projects.* - On or before March 29, 2019, the Secretary of Public Works and Highways, the provincial governors, city/municipal mayors and punong barangays in relation to national, provincial, city/municipal and barangay public works as the case as may be, shall submit to the Commission, thru the Campaign Finance Office (CFO), regional election directors/ provincial election supervisors/election officers concerned, certified lists of the following:

- 1) All on-going public works projects commenced before March 29, 2019;
- 2) Similar projects under foreign agreements; and
- 3) All public works undertaken by contract through public bidding held, or by negotiated contract awarded, before March 29, 2019 together with a copy of said contracts.

Any public works not included in the list herein required to be submitted by the Secretary of Public Works and Highways, the provincial governors, city/municipal mayors, and punong barangays, which are not among the exceptions under Sec. 261, subsection (v) of the OEC shall be considered as falling under the public works ban.

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SECTION 4. *Immediate payment of laborers required.* - Any laborer who may have worked on public works projects which have to be suspended pursuant to the forty-five (45) day ban on public works shall be paid immediately his complete earned wage upon the suspension of the public works projects. In no case shall the earned wage or any portion thereof be retained to be paid only within five (5) days before or on the day of the election. Likewise, any laborer who may worked in public works projects authorized under any of subparagraphs (a) to (d) of Sec.1 hereof, shall be paid his complete earned wage every regular pay and in no case shall said wage or any part thereof be retained or its payment deferred.

SECTION 5. *Issuance of Certificate of Exception.* - The CFO, in coordination with the COMELEC field officers, shall receive and compile the lists of authorized public works projects to be submitted by the Secretary of Public Works and Highways, provincial governors, city/municipal mayors and punong barangays in relation to national, provincial, city/municipal and barangay public works.

SECTION 6. *How to apply for a Certificate of Exception.* - Any written request for the issuance of Certificate of Exception shall be accompanied by the documentary requirements enumerated in the succeeding sections.

The Campaign Finance Office is hereby authorized to issue Certificate of Exception after a complete evaluation of documents submitted and upon payment of a certification fee in the amount of One Hundred (100.00) Pesos. The field offices shall refrain from receiving or charging the said amount from the requesting party until the CFO confirms the Certificate of Exception has been issued and the corresponding Order of Payment has been made.

For request not accompanied by the documentary requirements or incomplete documents, the CFO shall inform the requesting party in writing of the required documents to be submitted.

SECTION 7. *Documentary requirements for issuance of Certificate of Exception.* - For exceptions described in the preceding sections, the following documentary requirements shall be submitted by the requesting party for issuance of Certificate of Exception.

- 1) Maintenance of existing and/or completed public works project;
 - a) Certified true copy of the certificate of completion of the public works project;
 - b) Certified true copy of the letter of acceptance of the public works project;

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- c) Certified true copy of the contract covering the maintenance work being done on the existing/completed public works project;
 - d) A notarized or sworn undertaking or commitment not to allow, hire or employ more than or additional number of employees/laborers to work during March 29, 2019 to May 12, 2019; and
- 2) Public works projects undertaken by contract through public bidding or by negotiated contract awarded;
- a) Certified true copy of the notice of award of contract; or
 - b) Certified true copy of the notice to proceed with the public works project; or
 - c) Certified true copy of the contract agreement.

In the case of negotiated contracts awarded, the requesting party must submit:

- a) Certified true copy of the notice of award; or
 - b) Certified true copy of the negotiated contract; or
 - c) An official document showing the basis for proceeding to a negotiated contract, such as a Bid and Awards Committee (BAC) report or resolution declaring previous failed biddings, small value procurement, lease, emergency cases, and other similar documents.
- 3) Payment for the usual cost of preparation of public works project for working drawings, specifications, bills of materials, and estimates, purchase of materials and equipment, and other procedures preparatory to actual construction, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses;
- a) The statement of account, billing or collection invoice showing amount and date due evidencing the payment required to be released; and
 - b) A sworn or notarized undertaking or commitment not to hire or employ more laborers than number of laborers at commencement date of the project/s.

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- 4) Emergency work necessitated by the occurrence of a public calamity limited to the restoration of the damaged facility;
 - a) A certified true copy of the Executive Order or the Local Sanggunian Resolution declaring a state of calamity; and
 - b) Documentation showing the scope of the emergency work needed, which must be limited to the restoration of the damage facility.
- 5) Ongoing public works projects commenced before May 29, 2019 or other similar projects under foreign agreements. -
 - a) Certified true copy of the foreign agreement/contract; and
 - b) List of works covered by the foreign agreement/contract.

SECTION 8. *Projects, Activities, and Programs pertaining to Social Welfare Projects and Services (non-infrastructure projects)*- Social welfare projects and services which are originally under the Ministry of Human Settlements which are now performed by other departments/agencies of the government are not covered by the ban. However, the requesting party shall file a Petition for Exception before the Clerk of the Commission.

SECTION 9. *Projects and Programs entailing the use of other State/Public funds not covered under Section 261 (v) of the OEC.* - The release, disbursement or expenditures of other state funds are allowed subject to the following conditions:

- 1) The projects/programs/activities ("PPAs") sought to be implemented during the prohibited period of March 29, 2019 to May 12, 2019 were established before the said period and duly reported to the Commission on Audit pursuant to Item 2.1 of its Circular No. 2013-004 dated 30 January 2013¹;
- 2) The public awareness and information dissemination activities pertaining to these PPAs must conform to the guidelines provided under the said COA Circular.
- 3) In no instance shall the implementation of PPAs be used as an opportunity by any candidate, his or her spouse, family member within the second civil degree of affinity

¹ The subject of Commission on Audit Circular No. 2013-004 dated 30 January 2013 is "Information and Publicity on Programs/Projects/Activities of Government Agencies".

or consanguinity, political parties, party-list organizations and their nominees to further their candidacy through their personal appearance in such events, the posting, exhibition or distribution of any form of election propaganda, or any material containing their names, logos, initials, mottos, slogans, images, and other forms of representation attributable to them.

- 4) Support for or endorsement of candidates, party-list organizations and political parties shall not be made as a condition for the entitlement of the benefits from the PPAs.
- 5) Should the PPAs involve distribution of cash, goods or merchandise for scholarships, assistance for burial, healthcare, calamity and other similar programs, candidates, party-list nominees, their spouses, and members of their family within the second civil degree of affinity or consanguinity are strictly prohibited from participating, directly or indirectly, in the distribution thereof. A violation of this condition shall subject the candidates or their representatives to liability under Section 261 (o) of the OEC.

SECTION 10. *Public- Private Partnership and Build-Operate-Transfer Projects.* - Public works contracted under the Public-Private Partnership (PPP) and Build-Operate-Transfer (BOT) law are not covered by the ban on public works.

SECTION 11. *The Commission is not estopped from implementing Section 261 (o) of the OEC.* - In cases where the prohibited acts as described in Section 261 (o) of the OEC occur, the Certificate of Exception issued by the Campaign Finance Office shall not bar the Commission *En Banc* or other prosecuting arms of the government to conduct preliminary investigation of election offenses punishable under the OEC, pursuant to its prosecutorial powers under Section 254 thereof, as amended by Section 43 of Republic Act No. 9369.

SECTION 12. *Injunction.* - The Department of Budget and Management and the Commission on Audit, including all its field offices, are hereby enjoined not to release or authorize the release of any appropriation, or to pass in audit payments or expenditures of public funds that may directly or indirectly be used in violation of the prohibitions contained in Sec. 261, sub-sections (v) and (w) of the OEC or Sections 1 and 2 hereof.

SECTION 13. *Penalty.* - Any violation of the provisions of the Resolution shall, consistent with Sections 261 and 264 of the OEC, constitute

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an election offense and shall be punishable by imprisonment of not less than one (1) year but not more than six (6) years, among other penalties provided for by law.

SECTION 14. Effectivity. - This Resolution shall take effect on the seventh day after its publication in two (2) daily newspapers of general circulation.

SECTION 15. Dissemination. - The Education and Information Department shall cause the publication of this resolution in two (2) daily newspapers of general circulation, immediately after promulgation hereof, and shall furnish copies hereof to the Executive Secretary, the Chairman of the Commission on Audit, heads of all departments, and national offices, provincial governors, city/municipal mayors and punong barangays and other agencies of the government, including government - owned or controlled corporations, all registered political parties and all field offices of the Commission.

SO ORDERED.


SHERIEF M. ABAS

Chairman

VOTED IN FAVOR
AL A. PARREÑO
Commissioner

On Official Business

LUIE TITO F. GUIA
Commissioner

On Official Business

MA. ROWENA AMELIA V. GUANZON
Commissioner


SOCORRO B. INTING
Commissioner


MARLON S. CASQUEJO
Commissioner


ANTONIO T. KHO, JR.
Commissioner