

**Bids and Awards Committee for Infrastructure (BAC-I)**

**PROCUREMENT OF THE DESIGN AND CONSTRUCTION OF DOE'S WATER, SEWER AND DRAINAGE CONNECTIONS IN BONIFACIO GLOBAL CITY THROUGH NEGOTIATED PROCUREMENT (EMERGENCY CASES)**

**RESOLUTION NO. 12**

**WHEREAS**, the Bases Conversion and Development Authority is the owner of land being leased to the British School Manila (BSM), located at 36<sup>th</sup> Street University Parkway, Bonifacio Global City, Taguig City, which parcel of land is covered within the service area of Bonifacio Water Corporation (BWC) and adjoins the Department of Energy (DOE) Area;

**WHEREAS**, BWC is a grantee of the Certificate of Public Convenience (CPC) authorized to operate the water and sewerage within its service area within Bonifacio Global City (BGC), and offers a Sewerage Treatment Plant (STP) which has the ability to provide superior wastewater treatment;

**WHEREAS**, the Bonifacio Global City Estates Association, Inc. (BGCEA), as the estate association of all lot owners within BGC, is mandated to maintain and operate the common areas and facilities, which include the drainage system within BGC for the common benefit of all its members, locators and other stakeholders;

**WHEREAS**, the DOE is the owner/occupant of that parcel of land and the building improvements found thereon located along Rizal Drive in Fort Bonifacio, Taguig City;

**WHEREAS**, the DOE waste water discharge is not yet connected to a water treatment facility, which is legally required under Presidential Decree (PD) No. 198, otherwise known as the "Provincial Water Utilities Act of 1973";

**WHEREAS**, in 2019, BGCEA brought to the attention of the Philippine National Oil Company (PNOC)/DOE the concern of the BSM on the sewer, drainage and water discharge coming from the Energy Center Compound specifically from the DOE, which poses adverse health hazards to the BSM and other locators in BGC;

**WHEREAS**, BCDA received a letter from the BSM dated 05 November 2020 reiterating the concern of the BSM community on the water, sewer, and drainage discharges from the DOE compound overflowing to the pedestrian sidewalk especially during rainy season, and requesting an immediate solution to this concern as it poses health and safety risks to the community;

**WHEREAS**, the waste water discharge coming from the DOE compound overflows and crosses the streets of BGC especially during rainy season, thus may cause costly road deterioration, pose more health hazards such as airborne and waterborne diseases to all people passing through and living around the DOE area, and possibly be the conduit and nesting place of COVID-19 infections;

**WHEREAS**, to address the pressing concerns of the aforementioned waste water discharge from DOE compound, the BWC recommended that the DOE should connect to the water, sewer and drainage system of BGC, and that the service connections for sewer and drainage should be

constructed within the BCDA property being leased by BSM;

**WHEREAS**, there is an urgent need for the DOE to connect to the drainage system of BGC, in order to properly address environment and health concerns attendant to water usage and wastewater effluents, as soon as possible in the light of the need to address the environmental and sanitation concerns which have been affecting the immediate vicinity;

**WHEREAS**, according to the Department of Health (DOH), COVID-19 is transmitted from person to person via droplets, contact, and fomites. The World Health Organization (WHO) also stated that SARS-CoV-2 RNA, the causative agent of COVID-19, has also been detected in other biological samples, including the urine and feces of some patients. One study found viable SARS-CoV-2 in the urine of one patient. Three studies have cultured SARS-CoV-2 from stool specimens<sup>1</sup>;

**WHEREAS**, Section 3 of Proclamation 929 dated 16 March 2020, as extended by Proclamation 1021 dated 16 September 2020 provides, "All government agencies and LGUs are enjoined to render full assistance to and cooperation with each other and mobilize the necessary resources to undertake critical, urgent, and appropriate disaster response aid and measures in a timely manner to curtail and eliminate the threat of Covid-19";

**WHEREAS**, Section 4 of RA 11494 dated 11 September 2020, or the Bayanihan to Recover as One Act authorizes the President to undertake and implement several COVID-19 response and recovery interventions, including the implementation of the proper management and segregation of waste, especially of hazardous materials coming from health facilities, in the communities and households in order to contain the COVID-19 virus and other diseases<sup>2</sup>;

**WHEREAS**, BCDA sought the opinion of the Office of Government Corporate Counsel (OGCC) whether BCDA can resort to Negotiated Procurement (Emergency Cases) under RA 9184 in relation to RA 11494, for the Design and Construction of DOE's Water, Sewer and Drainage Connections in Bonifacio Global City. The OGCC, in the OGCC Opinion No. 311 dated 24 November 2020, states that:

"BCDA may resort to negotiated procurement provided that: (a) the HoPE of BCDA shall confirm the existence and veracity of the grounds relied upon in the adoption of Negotiated Procurement (Emergency Cases). This means that the HoPE must be able to relate the projects to be procured to the emergency situation or condition it is intending to address. It shall likewise consider the appropriate timing or the proximity of time between the actual procurement activity to be conducted and the emergency sought to be addressed, such that when the reason or cause for the emergency has already been abated, adoption of Competitive Bidding or other applicable Alternative Modes of Procurement should be considered; and (b) The HoPE of BCDA shall validate from the appropriate office that there are funds in the budget to cover the Procurement Project subject to Negotiated Procurement (Emergency Cases).

Considering that there is no higher right than the right to life, BCDA should ensure that prompt and immediate solution should be undertaken to address the problem at hand with due regard to existing laws, rules and regulations."

<sup>1</sup> Transmission of SARS-CoV-2 – implications for infection prevention precautions: Scientific brief  
<https://www.who.int/publications/i/item/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations>

<sup>2</sup> Section 4 (oo), RA 11494

**WHEREAS**, Section 48 of the RIRR of RA 9184 provides that, "Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in this Rule";

**WHEREAS**, Section 53 of the same RIRR provides Negotiated Procurement as an alternative method of procurement of Goods, Infrastructure Projects and Consulting Services, whereby the Procuring Entity directly negotiates a contract with technically, legally and financially capable supplier, contractor or consultant in emergency cases, among others, to wit:

Sec. 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.

**WHEREAS**, to streamline procurement process during the pandemic, the Government Procurement Policy Board (GPPB) issued Resolution 03-2020 approving the Adoption of Efficient, Effective, and Expedient Procurement procedures During a State of Public Health Emergency. The GPPB has determined that it is necessary to harmonize Section 53.2 of the 2016 revised IRR of RA 9184 and Item V(D)(2a) of Annex "H" of the same IRR, on Negotiated Procurement (Emergency Cases) modality with those under RA 11332<sup>3</sup> and RA 10121<sup>4</sup> in relation to the Special Provision No. 1 of the GAA of 2020, particularly on the instances or situations where the foregoing conditions may be applied in order to provide 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. The GPPB approved the revision of Item V(D)(2a) of Annex "H" of the IRR, viz:

## 2. Emergency Cases

a) Instances when Negotiated Procurement under Emergency Cases may be resorted to:

- i. In case of imminent danger to life or property during a state of calamity, or
- ii. When time is of the essence arising from natural or man-made calamities, or
- iii. Other causes where immediate action is necessary;
  - a) to prevent damage to or loss of life or property, or
  - b) 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. (emphasis supplied)

<sup>3</sup> An Act Providing Policies and Prescribing Procedures on Surveillance and Response to Notifiable Diseases, Epidemics, and Health Events of Public Health Concern, and Appropriating Funds Therefor, Repealing for the Purpose Act No. 3573, Otherwise known as the "Law on Reporting of Communicable Diseases"

<sup>4</sup> Philippine Disaster Risk Reduction and Management Act of 2010

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**WHEREAS**, BCDA and DOE executed a Memorandum of Agreement (MOA) dated 15 January 2021, in which BCDA, as provided under Article II of the said MOA, shall be responsible for the Procurement of the Design and Construction of DOE's Water, Sewer and Drainage Connections in BGC (the "Project") through Negotiated Procurement under Emergency Cases of the RIRR of RA 9184, while DOE already transferred the funds amounting to Twenty Million Five Hundred Thousand Pesos (Php20,500,000.00) to BCDA for the procurement of the Project;

**WHEREAS**, the aforementioned GPPB Resolution No. 03-2020 authorizes the HoPE to delegate to either the BAC or the End-user unit or any other appropriate bureau, committee, support or procuring unit the authority to directly negotiate with a legally, technically, and financially capable supplier, contractor, or consultant for procurement undertaken through any of the allowable instances of Negotiated Procurement (Emergency Cases) under Section 53.2 of the 2016 RIRR and Item V(D)(2a) of Annex "H" of the same IRR;

**WHEREAS**, following the issuance of GPPB Resolution No. 03-2020, the GPPB issued Non-Policy Matter Opinion NPM No. 003-2020 in anticipation of requests for clarifications on the application of Negotiated Procurement (Emergency Cases) under Section 53(b) of RA 9184 and Section 53.2 of its 2016 RIRR, and to guide all Procuring Entities in the conduct of the Procurement Projects under this modality, which states, among others, that:

"To simplify the process, allow the End-user unit or any other appropriate bureau, committee, support or procuring unit to recommend to the Head of the Procuring Entity (HoPE) any revision of the Annual Procurement Plan (APP) to cover the Procurement Project that will be resorting to Negotiated Procurement (Emergency Cases) subject to the validation by the appropriate office in the PE that there are funds in the budget to cover for the same. Thus, the Bids and Awards Committee (BAC) need not be the one to recommend the revision of the APP;

Moreover, by approving the APP, the HoPE effectively confirms the existence and veracity of the ground(s) relied upon in resorting to Negotiated Procurement (Emergency Cases). Thereby dispensing with the previous written confirmation requirement from the HoPE prior to approval of contract.

Similarly, the HoPE may now authorize the End-user unit or any other appropriate bureau, committee, support or procuring unit to directly negotiate with a legally technically, and financially capable supplier, contractor, or consultant. Hence, the BAC need not be the one to negotiate or procure."

**WHEREAS**, the Bids and Awards Committee for Infrastructure (BAC-I), in its Resolution No. 09 dated 02 June 2021 resolved to recommend the following:

1. To delegate to the End-user unit the authority to proceed with the procurement of the **Design and Construction of DOE's Water, Sewer and Drainage Connections in Bonifacio Global City through Negotiated Procurement (Emergency Cases)** pursuant to Section 53.2 of the 2016 revised IRR and Item V(D)(2a) of Annex "H" of the same IRR and its related amendments as contained in GPPB Resolution 03-2020, and the authority to directly negotiate with a legally, technically, and financially capable contractor for the Project;

2. For the End-user unit to submit its Report and Recommendations to BAC-I based on the results of its negotiation with, evaluation and validation of the contractor; and
3. For BAC-I to issue BAC Resolution on its recommendation to HoPE based on the Report and Recommendations of the End-user unit.

**WHEREAS**, pursuant to the said BAC-I Resolution No. 09, the Engineering and Social Support Department (ESSD) being the end-user unit, issued the Request for Proposal on 14 October 2021;

**WHEREAS**, Positive Builders and Trading responded and submitted its proposal before the deadline on 22 October 2021;

**WHEREAS**, the ESSD immediately evaluated the proposal submitted by Positive Builders and Trading based on the documentary requirements indicated in the TOR as prescribed by the IRR of RA 9184, and finds the proposal responsive and qualifying Positive Builders and Trading to proceed with the negotiation;

**WHEREAS**, on 04 November 2021, a successful negotiation was conducted between Positive Builders and Trading and BCDA through the ESSD; and

**WHEREAS**, on 10 November 2021, the ESSD reported to the BAC-I the results of its negotiation with, evaluation and validation of the contractor.


**NOW, THEREFORE**, foregoing considered, we, the Members of the Bids and Awards Committee for Infrastructure (BAC-I), hereby **RESOLVE** as it is hereby **RESOLVED** to recommend the following:

1. To award the contract to **Positive Builders and Trading** for the **Design and Construction of DOE's Water, Sewer and Drainage Connections in Bonifacio Global City** through **Negotiated Procurement (Emergency Cases)** in the amount of **Pesos: Twenty Million Three Hundred Fifty One Thousand Six Hundred Fifty and 00/100 (₱20,351,650.00)** pursuant to Section 53.2 of the 2016 revised IRR and Item V(D)(2a) of Annex "H" of the same IRR and its related amendments as contained in GPPB Resolution 03-2020; and
2. To issue the corresponding Notice of Award (NOA) to **Positive Builders and Trading**.

**RESOLVED**, at the BCDA Corporate Center Office, this 10<sup>th</sup> day of November 2021.

**BIDS AND AWARDS COMMITTEE FOR INFRASTRUCTURE (BAC-I)**

  
**ARREY A. PEREZ**  
Chairperson

  
**ATTY. MARIA SOLEDAD C. SAN PABLO**  
Vice Chairperson

  
**ENGR. RICHARD BRIAN M. CEPE**  
Member




**ENGR. MARK P. TORRES**  
Member



**ENGR. RYAN PAUL S. GALURA**  
Member

Approved by:



**AILEEN ANUNCIACION R. ZOSA**  
Officer-in-Charge  
Office of the President and CEO