



Republic of the Philippines
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

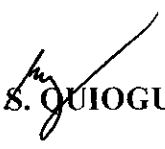
March 25, 2013

MEMORANDUM CIRCULAR NO. 2013-19

For : **Undersecretaries
Assistant Secretaries
Heads of Sectoral Offices and Attached Agencies
and Corporations
Head Executive Assistant
Service Directors
RMC Chairmen
Division Chiefs
This Department**

For your information and dissemination, transmitted herewith is:

NATURE	DATE	SUBJECT
COMELEC-Resolution <u>No. 9660</u>	March 22, 2013	"IN THE MATTER OF REQUESTS FOR EXEMPTION FROM THE COVERAGE OF SECTION 261 (V) AND (W) OF THE OMNIBUS ELECTION CODE, CLARIFYING RESOLUTION NO. 9585 AND SECTION 19 OF RESOLUTION NO. 9616."


ROWENA S. QUIOGUE
Director III
Administrative Service

3/26/13



Republic of the Philippines
COMMISSION ON ELECTIONS
Intramuros, Manila

IN THE MATTER OF REQUESTS FOR
EXEMPTION FROM THE COVERAGE
OF SECTION 261 (v) AND (w) OF
THE OMNIBUS ELECTION CODE,
CLARIFYING RESOLUTION NO.
9585 AND SECTION 19 OF
RESOLUTION NO. 9616.

BRILLANTES, Sixto S. Jr., Chairman
TAGLE, Lucenito N., Commissioner
YUSOPH, Elias R., Commissioner
LIM, Christian Robert S., Commissioner
PADACA, Ma. Gracia Cielga M., Commissioner

Promulgated:

March 22, 2013

x ----- x

RESOLUTION NO. 9660

WHEREAS, the Commission, through its Law Department, has been receiving requests from various government agencies for exemptions from the prohibition provided in Section 261 (v) and (w) of the Omnibus Election Code ("OEC");

WHEREAS, similar requests have likewise been received from incumbent Members of the House of Representatives to exempt various projects and programs based on the use of their Priority Development Assistant Fund (PDAF);

WHEREAS, Resolution No. 9585, promulgated on 18 December 2012, required the Secretary of Public Works and Highways and local government chief executives to submit certified lists of ongoing public works projects commenced before 29 March 2013, other similar projects under foreign agreements, and all public works undertaken by contract through public bidding held, or by negotiated contract awarded before 29 March 2013;¹

WHEREAS, the Campaign Finance Unit, through the Law Department, was designated as the custodian of the submitted

¹ Section 3, Resolution No. 9585.

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Board Secretary II 3/25/13

certified lists and was authorized to issue Certificates of Exception upon request;²

WHEREAS, this Commission has no power to grant exemptions from the prohibited acts described under Section 261 (v) and (w) of the OEC and is limited to the exceptions provided therein;

WHEREAS, there is a need to issue guidelines on the issuance of Certificates of Exception so that the Law Department and the parties requesting for the same will be advised accordingly;

NOW, THEREFORE, the Commission on Elections, by virtue of the power vested in it by the Constitution, the OEC and other election laws, do hereby **RESOLVE**, as it hereby **RESOLVES** to promulgate the following guidelines for the issuance of Certificates of Exception:

Section 1. Law Department as the Campaign Finance Unit. – As per Section 19 of *Resolution No. 9616*, the Law Department shall be responsible for evaluating requests for issuances of Certificates of Exception under these guidelines. The Director of the Law Department shall issue the Certificate of Exception should the requests conform to the guidelines provided in this Resolution. The Law Department is likewise authorized to charge a certification fee of Five Hundred Pesos (PhP 500.00) per request.

Section 2. Maintenance of existing and/or completed public works project; documentary requirements. – For exceptions described under Section 261 (v) (1) (a) of the OEC, the following documents must be submitted by the party requesting for the Certificate of Exception:

- (1) Certified true copy of the certificate of completion of the public works project;
- (2) Certified true copy of the letter of acceptance of the public works project;

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² Section 19, Resolution No. 9616.

- (3) Certified true copy of the contract covering the maintenance work being done on the existing/completed public works project;
- (4) A notarized or sworn undertaking or commitment not to allow or permit more than X number of employees/laborers to work during 29 March 2013 to 13 May 2013; and
- (5) A notarized or sworn undertaking or commitment not to hire or employ additional laborers/employees that would exceed X number from 29 March 2013 to 13 May 2013.

In relation to numbers (4) and (5), X represents the average number of employees/laborers already employed during the 6-month period before 29 March 2013, computed as follows:

$$X = \frac{[(\# \text{ of employees as of 28 October 2012}) + (\# \text{ of employees as of 28 November 2012}) + (\# \text{ of employees as of 28 December 2012}) + (\# \text{ of employees as of 28 January 2013}) + (\# \text{ of employees as of 28 February 2013}) + (\# \text{ of employees as of 28 March 2013})] \div 6}$$

Section 3. *Public works projects undertaken by contract through public bidding or by negotiated contract awarded, before 29 March 2013; documentary requirements.* - For exceptions provided under Section 261 (v) (1) (b) of the OEC, the following documents must be submitted by the party requesting for the Certificate of Exception:

- (1) Certified true copy of the notice of award of contract;
- (2) Certified true copy of the notice to proceed with the public works project; and
- (3) Certified true copy of the contract agreement.
- (4) In the case of negotiated contracts, the requesting party must submit:
 - (a) Certified true copy of the negotiated contract; and
 - (b) 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

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procurement, lease, emergency cases, and other similar documents.

Section 4. *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 before 29 March 2013; documentary requirements.* -- For exceptions provided under Section 261 (v) (1) (c) of the OEC, the following documents must be submitted by the party requesting for the Certificate of Exception:

- (1) The statement of account, billing or collection invoice showing amount and date due evidencing the payment required to be released; and
- (2) A sworn or notarized undertaking or commitment not to hire more laborers than number of laborers at commencement date of the project/s.

Section 5. *Emergency work necessitated by the occurrence of a public calamity, but limited to the restoration of the damaged facility; documentary requirements.* -- For exceptions provided under Section 261 (v) (1) (d) of the OEC, the following documents must be submitted by the party requesting for the Certificate of Exception:

- (1) A certified true copy of the Executive Order or the Local Sanggunian Resolution declaring a state of calamity; and
- (2) Documentation showing the scope of the emergency work needed, which must be limited to the restoration of the damage facility.

Section 6. *Ongoing public works projects commenced before the campaign period or other similar projects under foreign agreements.* -- For exceptions provided under the last paragraph of Section 261 (v) (1) of the OEC, the following documents must be submitted by the party requesting for the Certificate of Exception:

- (1) Certified true copy of the foreign agreement/contract;
and

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- (2) List of works covered by the foreign agreement/contract.

Section 7. *Construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices.* - Certificates of Exception shall be issued in relation to Section 261 (w) (a) of the OEC only if the undertaking of construction for public works refer to projects or works already exempted in Section 261 (v) of the OEC.

The prohibition against the issuance, use, availment of treasury warrants or any device undertaking future delivery of money, goods, or other things of value chargeable against public funds from 29 March 2013 to 13 May 2013 under Section 261 (w) (b) shall remain without exception.

Section 8. *How to apply for a Certificate of Exception.* - Written requests for the issuance of Certificates of Exception must be accompanied by the documentary requirements enumerated in Sections 2 to 6 of this Resolution, depending on the nature of the public works project subject of the request.

For requests that are not accompanied by the aforementioned documentary requirements, the Law Department shall inform the requesting party in writing of the required documents he or she will need to submit as specified in this Resolution.

Section 9. *Projects and programs entailing the use of the Priority Development Assistance Fund (PDAF) and other state/public funds not covered under Section 261 (v) of the OEC.* - The release, disbursement or expenditures of the PDAF and 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 29 March 2013 to 13 May 2013 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 2013³;

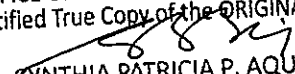
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³ The subject of Commission on Audit Circular No. 2013-004 dated 30 January 2013 is "Information and Publicity on Programs/Projects/Activities of Government Agencies".

- (2) The public awareness and information dissemination activities pertaining to these PPAs must conform to the guidelines provided under Item 2.2 of the same 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 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 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. *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 Law Department 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.

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Section 11. *Publication and Dissemination.* -- The Office of the Clerk of the Commission is directed to furnish copies of this

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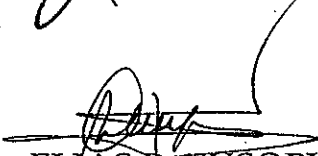
Resolution to the Offices of the President, Senate President, and Speaker of the House of Representatives. The Education and Information Department is likewise directed to cause the publication of this Resolution and to disseminate the same to all interested parties.

Section 12. *Effectivity.* - This Resolution shall take effect immediately upon its publication in two (2) newspapers of general circulation.


SO ORDERED.


SIXTO S. BRILLANTES JR.,
Chairman



LUCENITO N. TAGLE
Commissioner


ELIAS R. YUSOPH
Commissioner


CHRISTIAN ROBERT S. LIM
Commissioner


MARIA GRACIA CIELO M. PADACA
Commissioner

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