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**MEMORANDUM**

**TO :** THE REGIONAL EXECUTIVE DIRECTOR  
Regions IX, X, XI, XII, and XIII

**FROM :** THE UNDERSECRETARY  
Field Operations – Mindanao

**SUBJECT :** AUDIT OBSERVATION MEMORANDUM (AOM) NO.: 2022-  
CA-001 RE: NATIONAL GREENING PROGRAM (NGP)

**DATE :** MAY 25 2022

Furnished herewith is a copy of the memorandum with enclosures from the Head Executive Assistant dated 18 May 2022, which was received by this Office on 24 May 2022, relative to the subject matter.

For information, guidance, and appropriate action.

  
JOSELIN MARCUS E. FRAGADA, CESO III

**Copy furnished:**

- The Head Executive Assistant
- The Assistant Secretary for Field Operations – Western Mindanao
- The Assistant Secretary for Field Operations – Eastern Mindanao

MEMO NO. 2022 - 342



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Department of Environment and Natural Resources  
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**MEMORANDUM**

FOR : **THE UNDERSECRETARY**  
Field Operations – Luzon, Visayas and Environment  
  
**THE UNDERSECRETARY**  
Field Operations – Mindanao

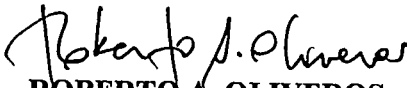
FROM : **THE HEAD EXECUTIVE ASSISTANT**

SUBJECT : **AUDIT OBSERVATION MEMORANDUM (AOM) NO.:2022-CA-001 RE: NATIONAL GREENING PROGRAM (NGP)**

DATE : 18 May 2022

This refers to the AOM dated 21 March 2022 from the Office of the Supervising Auditor – Audit Group C & D, Commission on Audit (COA), addressed to the DENR Secretary, providing us with the results of their review on the provisions of the DENR Memorandum Circular (DMC) No. 2013-06 dated 16 April 2013.

We are furnishing you with the copy of the said letter for your information, record and reference, please. Thank you

  
**ROBERTO A. OLIVEROS**



REPUBLIC OF THE PHILIPPINES  
**COMMISSION ON AUDIT**  
NATIONAL GOVERNMENT AUDIT SECTOR  
CLUSTER 8- AGRICULTURE AND ENVIRONMENT  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES 1 & 2  
Visayas Ave., Diliman, Quezon City

Office of the Supervising Auditor – Audit Group C & D

AOM No.: 2022-CA-001 (NGP)  
Date : March 21, 2022

**AUDIT OBSERVATIONS MEMORANDUM (AOM)**

**For: Secretary JIM SAMPULNA**  
Department of Environment and Natural Resources  
Visayas Ave., Diliman, Quezon City

We have reviewed the provisions of the DENR Memorandum Circular (DMC) No. 2013-06 dated April 16, 2013, the Guidelines and Procedures for Plantation Development for the National Greening Program (NGP) with area coverage of 100 hectares and above within Public Forestlands through the Engagement of Services of Private Sectors, Civil Society Organizations (CSOs), Non-Government Organizations (NGOs), People's Organizations (POs)/Indigenous Peoples (IPs), Local Government Units and Other Government Entities, and noted the following:

The ambiguity and impropriety of some provisions, the lack of NGP sustainability provisions, and the non-alignment of some provisions of the DENR MC No. 2013-06 with the provisions in E.O. No. 26, which mandated the implementation of NGP, resulted in the non-compliance with the mandate in Section 2 of said E.O. and other negative effects to the program's implementation, which is to the government's disadvantage, such as: 1) payments of full contract amount to Partners for projects that failed to meet the terms and conditions of the contract as well as non-deduction of 10% retention fee for some contracts; 2) advance payments of NGP contracts due to defective contract provisions; 3) planting of more production/exotic trees and high-value crops than indigenous trees; 4) establishment of NGP tree plantations on areas with existing tenurial contracts issued; 5) abandonment of some NGP Tree plantations after the completion of the three-years Comprehensive Site Development (CSD) contracts, and 6) other negative impacts.

Analysis of the provisions of the DENR MC No. 2013-06 in relation to E.O. No. 23 and 26, and other related rules and regulations disclosed the following:

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
Section 1. Objective	The objective of this guidelines is to accelerate/hasten the	The objective of DMC No. 2013-06 under Section 1 is not aligned with Section 1 of E.O. No. 26, which is to	E.O. 26 provides for the NGP to plant some 1.5 billion trees and not just

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p><u>attainment of 1.5 billion seedling production and a minimum 1.5 million hectares plantation establishment at the end of 2016 of the National Greening Program through the engagement of services of Private Sectors, Civil Society Organizations, Non-Government Organizations, People's Organizations / Indigenous People, Local Government Units and Other Government Entities herein referred to as Partners.</u></p>	<p>plant some 1.5 billion trees in about 1.5 million hectares and not merely seedling productions. Moreover, the NGP Strategies in Section 3, paragraph 3.1 of E.O. 26 simply provides for Social Mobilization as a strategy. The Private Sectors and Civil Society groups are only encouraged to participate in the NGP while the People's Organizations (POs) are given the primary responsibility of maintaining and protecting the established plantations, and we quote:</p> <p><i>"3.1.1 All students, identified by the DepEd and CHED and all government employees shall be individually required to plant a minimum of ten (10) seedlings per year in areas determined by the Convergence Initiative. Private Sectors and civil society groups shall likewise be encouraged to participate in the NGP.</i></p> <p><i>3.1.2 With appropriate assistance from the government and private sector, the People's Organizations (POs) shall be given the primary responsibility of maintaining and protecting the established plantations." (underscoring ours)</i></p>	<p>production of seedling as provided for in Section 1 of DENR MC 2013-06.</p> <p>Private sectors and civil society groups are only encouraged to participate in the NGP<sup>1</sup>, specifically in the planting of seedlings in areas determined by the Convergence Initiative.</p> <p>Likewise, the responsibility given to POs under 3.1.2 of E.O. 26 pertains only to maintaining and protecting the established plantations but not for the Comprehensive Site Development (CSD) activities. <u>In no way that the guidelines for NGP contradicts/deviates from the provisions of E.O. 26</u>, which mandated the implementation of NGP.</p> <p>As such, the E.O. 26 should have been amended first that would allow for the adoption of the CSD as a new strategy and/or modality in the implementation of the NGP prior to the issuance of DENR MC No. 2013-06. Otherwise, the implementing guidelines should be aligned to the provisions of the E.O. No. 26.</p>
Section 2. Potential areas for plantation development	<p>Potential areas for plantation development are degraded/ denuded lands of the public domain, open access areas, which include cancelled, expired, and abandoned tenured areas; and undeveloped portions of areas managed by peoples' organizations / indigenous</p>	<p>The 2<sup>nd</sup> criteria for the potential area for development which states <i>"and undeveloped portions of areas managed by peoples' organizations /indigenous communities"</i> is ambiguous and unclear.</p> <p>It does not specify the criteria for the determination of the undeveloped portion of areas</p>	<p>The non-development of the area subject of the CBFMA or any tenurial agreements by the tenured holder constitute a breach of the agreement<sup>2</sup> considering that the privileges granted to the tenure holder, which is to develop, utilize, and manage the small portion of forestlands was not completely performed by the tenure holder. To be considered as NGP site,</p>

<sup>1</sup> Para. 3.1.1 of E.O. 26

<sup>2</sup> Sec.1.6 of EO 23, Community-Based Forest Management Agreement (CBFMA) is an agreement entered into by and between the government and the local community in a locality, represented by a People's Organization as forest managers, for a specific period wherein the local community is allowed to develop, utilize and manage a small tract of forestland consistent with the principle of sustainable development.

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p>communities (POs/ICs). The minimum area shall be 100 hectares and maximum area of 1,000 hectares contiguous or clustered within the municipality identified by the DENR.</p>	<p>managed by POs/ICs and the amendment of the tenurial instrument. If tenurial instrument exist, the agreement should have been revisited and amended/cancelled prior to the procurement of NGP CSD contract.</p>	<p>the agreement shall first be cancelled/revoked/expired, if not to be amended to ensure that the interest of the government on NGP projects are protected, since these projects are accounted for in the books of the DENR as a capital investments and recorded as a Land Improvement – Reforestation Projects.</p> <p>Significantly, in no case that the two (2) contracts (CBFA or any other contract and NGP CSD contracts) shall co-exists on the same area to be used for the establishment of NGP Tree Plantations.</p> <p>Also, there was no provision that the tenurial instrument for abandoned tenured areas shall first be cancelled/revoked prior to the establishment of NGP Tree Plantation should have been, which should have been provided/incorporated in the DMC.</p> <p><i>Thus, the NGP tree plantations established within tenured areas are at risks of cutting/harvesting because of the existing agreement in the CBFMA and/or other tenurial agreements.</i></p>
<p><b>Section 3. Development Mechanism and Modality.</b></p>	<p>Available areas shall be developed consistent with the NGP Commodity Roadmap for CY 2013-2016 in accordance with an approved Work and Financial Plan. The engagement shall be for <u>comprehensive site development (CSD) activities</u> which shall include seedling production, site preparation (brushing, staking and hole digging), planting and maintenance and protection. Funds for the purpose shall be provided by the DENR. <b>The unit costs represent the price ceiling and shall be consistent with existing guidelines, rules</b></p>	<p>Section 3 does not specify as to who prepare and approve the Work and Financial Plan and where it will be used? We cannot also find the format and content of the WFP as it is not Annex to the DMC.</p> <p>Also, it is not clear if this approved Work and Financial Plan is the same as the Work and Financial Plan indicated in one of the responsibilities of the NGP Partners in Section 5.2.1 and the bid proposal and indicative development plan in Section 4.2.4 of the same DMC.</p> <p>Further, no provision that the DENR shall prepare project cost estimates and approved budget for the contract (ABC) of all NGP projects</p>	<p>The ambiguity of the provision caused confusions and non-uniformity of implementation at the field offices.</p> <p>The said provision departs from the provisions of the E.O. No. 26 as well as the modality and strategy.</p> <p>Likewise, it is not in compliance with the provisions on the Community Participation Procurement Manual as prescribed by GPPB Resolution No. 09-2014 implementing Section 53.12 of the Revised IRR of RA 9184. The CPPM states that <i>“The approved Budget for the Contract (ABC) of the project or its component that will be procured through Negotiated Procurement-Community Participation meets the following</i></p>

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p>and regulations on the matter and payment thereof shall be done through progress billing.</p>	<p>contracted with the implementing partner, as a component of the WFP and as required for in Chapter II, Item 2.2, paragraph 5 of the Manual on Community Participation Procurement Manual (CPPM).</p> <p>Likewise, the statement that <i>"The unit costs represent the price ceiling and shall be consistent with existing guidelines, rules, the threshold for goods is and regulations on the matter and payment thereof shall be done through progress billing"</i>, appears to be ambiguous.</p> <p>Questions may arise, such as: Where can we find this unit costs? What existing guidelines, rules and regulations that they are referring to? What is to be paid through progress billing?</p> <p>More importantly, the provision that <i>"The engagement shall be for comprehensive site development (CSD) activities"</i> is not within the modality/ strategies provided for in Section 3 of E.O. 26, ordering and declaring the implementation of the National Greening Program.</p>	<p><i>thresholds: 1) If the procuring entity is a national government, the threshold for goods is two million and for infrastructure projects is five million.<sup>3)</sup></i></p> <p>Thus, the nature of procurement for the Comprehensive Site Development (SDP) activities of NGP projects considering that it is a capital outlay falls under the category of infrastructure projects.</p> <p>Moreover, the provision that <i>"The engagement shall be for comprehensive site development (CSD) activities"</i> is not within the modality/ strategies provided for in Section 3 of E.O. 26, therefore, it has <b>no legal basis</b>. The provision under Sec. 3.1 of E.O. 26 should have been amended first prior to the issuance of DENR MC No. 2013-06.</p>
		<p><b>On Comprehensive Site Development (CSD)</b></p> <p>Section 3 of E.O. No. 26 provides for Strategies to ensure the successful implementation of the NGP. Specifically, Section 3.1 on <b>Social Mobilization</b>, which states that:</p> <p><i>"3.1.1 All students, identified by the DepEd and CHED and all government employees shall be individually required to plant a minimum of ten (10) seedlings per year in areas determined by the Convergence Initiative. Private Sectors and civil society groups shall likewise be encouraged to participate in the NGP."</i></p>	<p>Basically, the implementing guidelines should be aligned with the provisions of the Executive Order.</p> <p>Thus, the provision under DENR MC No. 2013-06, which changes the modality of the NGP implementation from social mobilization to CSD lack the legal basis.</p>

<sup>3</sup> Paragraph 5, Item 2.2, Chapter II of the CPPM.

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
		<p><i>3.1.2 With appropriate assistance from the government and private sector, <u>the People's Organizations (POs) shall be given the primary responsibility of maintaining and protecting the established plantations.</u></i></p> <p>There was no mention of the Comprehensive Site Development (CSD) activities as a modality.</p>	
	<p><b>3.1 Modes of Engagement</b></p> <p>3.1.1 For NGP sites with existing POs/IPs, the contracting shall be made with the PO/IP through a Memorandum of Agreement (MOA) with the DENR pursuant to Section 53.12 of RA 9184.</p>	<p>The provision under 3.1.1 appears to be <b>ambiguous and misleading</b>. The statement that <i>"For NGP sites with existing POs/IPs, the contracting shall be made with the PO/IP through a Memorandum of Agreement (MOA) with the DENR"</i> can be interpreted as direct contracting with the POs/IPs without observing the proper procedures of procurement under RA 9184, which starts from the eligibility screening to the awarding of contract. Moreover, per CPPM, the term "existing POs" refers to the existing POs within the community who shall participate in the Negotiated Procurement - Community Participation<sup>4</sup>, following the procedures provided in Chapter II of the CPPM.</p> <p>There is also a need for a statement to be provided that the identified POs referred to in 3.1.1 shall be subjected to eligibility screening and proper procedures on Negotiated procurement - community participation, even before and after the effectivity of GPPB Resolution No. 09-2014, in accordance with RA 9184. Section 4 should have been amended to adopt the said GPPB Resolution.</p>	<p>The said provision is not in compliance with the provisions in the Community Participation Procurement Manual (CPPM) as prescribed by GPPB Resolution No. 09-2014 implementing Section 53.12 of the Revised IRR of RA 9184.</p> <p>The term "For NGP sites with existing POs/IPs, xxx", shall mean existing POs in the community and not the PO occupying the area where NGP Project is to be established per CPPM.</p> <p>Therefore, this provision departs from Section 53.12 of the RIRR of RA 9184. Likewise, other POs in the community were not given the opportunity to participate in the procurement process.</p>
	<p>3.1.2 Concerned local government units and other government entities may enter into MOA with the DENR for the development</p>	<p>The extent of participation of LGUs and other partner agencies as well as the procedure on engaging contract with concerned local government units (LGUs) and other</p>	<p>The extent of participation of LGUs and other partner agencies as well as the procedure on engaging contract with concerned local government units (LGUs) and other partner</p>

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Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	of degraded / denuded open access lands of the public domain within their political areas of jurisdiction pursuant to Agency to Agency mode of procurement.	partner government entities/ stakeholders was not specified in the DENR MC 2013-06 in line with Section 5.6 of E.O. No. 26.	government entities/ stakeholders should have been provided for clarity.
	3.1.3 Foundations, Non-Government & Civil Society Organizations and Private Corporations may enter into contract with the DENR for the comprehensive site development of degraded/ denuded open access (untenured) areas within forestlands thru competitive bidding in accordance with RA 9184.	No provision in E.O. 26 for the engagement of Foundations, Non-Government & Civil Society Organizations and Private Corporations to undertake comprehensive site development activities through contract.	Engaging into comprehensive site development by Foundations, Non-Government & Civil Society Organizations and Private Corporations also lack the basis considering further that contracting the CSD activities was not provided in E.O. 26.  The only provision found in E.O. 26 is Section 3.1.2, which provides that <u>"With appropriate assistance from the government and private sector, the People's Organizations (POs) shall be given the primary responsibility of maintaining and protecting the established plantations."</u>
	The PENRO shall be authorized to sign MOA/Contract for areas covering less than 500 hectares while the Regional Executive Director shall be the signatory for 500 hectares and above. Annexes 1 and 2 are templates of the MOA/Contract.	The provisions in the contract, specifically, Sec. 2, Scope and Coverage needs to be specific with complete description of the area contracted specifying also the exact boundaries (latitude and longitude).  Likewise, Section 3, Article II, Funding of Annexes 1 and 2 is not consistent with the appropriations under the General Appropriations Act.	The GAA appropriated funds under the capital outlay for the National Greening Program projects, however, Section 3, Article II of Annexes 1 and 2, Funding - provides that the DENR shall make available financial assistance. Financial assistance shall only be sourced from MOOE while the funding from the NGP project implementation is a capital outlay.  Thus, said provision is defective since it is inconsistent with the general appropriations law.
<b>Section 5. Responsibilities of Parties</b>	5.1 The DENR shall:  5.1.1 Conduct survey, mapping and planning (indicative plan) 5.1.2 Ensure compliance of the development partners to the terms and conditions of the MOA/Contract; 5.1.3 Provide funds for the comprehensive site development subject to the approved Work and Financial Plan (WFP); and	The component of the Indicative plan provided under paragraph 5.1.1 was not specified and the outputs, such as: 1) <b>Work and Financial Plan (WFP) or the project components, technical specifications or scope of work of tree plantation with cost estimates and contract packaging; and,</b> 2) <b>NGP sites duly reflected in a GIS generated map indicating suitable species and geo-tagged photos of the NGP sites.</b>	All the documents mentions should have been provided by the procuring entity or in this case, the DENR. Considering the ambiguity of the statement, thus leaving the provision hanging on what the indicative plan is all about.  Also, the <b>WFP or project components, technical specifications or scope of work containing the area for planting specifying the distance of each seedling and the species to be planted together with the cost estimates shall serve as the basis for</b>



Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p>5.1.4 Conduct regular monitoring and evaluation.</p>	<p>In Item 5.1.4, It states, "<i>Conduct regular monitoring and evaluation.</i>" However, it is not clear what monitoring and evaluation report to be prepared and submitted to the DENR and to the oversight agencies. It does not also indicate the composition of the monitoring team as to who will be the official responsible for performing the tasks.</p> <p>Moreover, there were no provisions in the interventions to be undertaken based on the results of the monitoring of the projects implementation.</p> <p>Moreover, the responsibility to conduct photo documentation (before, during and after planting) and geo-tagging of established plantations was not among the responsibility of the DENR instead given to the Contractor/Project Partner.</p> <p>Basically, project's documentation is the responsibility of the DENR, the implementing agency and not the contractor or project partners. The contractor or project partners document their accomplishments as a supporting documents to the progress billing or claims for payments of contract.</p>	<p>the Agency budget for the contract (ABC) while the ABC serve as the basis of the project specifications and cost ceiling for the WFP to be prepared by the Contractor / Project Partner for their bid proposal pursuant to the procedures in the CPPM.</p> <p>On the photo documentation and geo-tagging, considering that Projects' partners are POs and CSOs, they may not have the capability to undertake such activity as it requires IT equipment and technical expertise. Likewise, it would lead to bias if it shall be taken by the Contractor/Partner themselves. Why not the DENR or the PENRO personnel are given such responsibility who has the technical expertise on the matter?</p>
	<p>5.2 The Partner shall:</p> <p>5.2.1 Submit the Work and Financial Plan (WFP) for approval of the DENR which shall form part of the Memorandum of Agreement/ Contract;</p> <p>5.2.2 Produce planting materials following the standards prescribed by the DENR;</p> <p>5.2.3 Establish plantations as required under the MOA/Contract;</p> <p>5.2.4 Maintain and protect established plantations;</p>	<p>The preparation of the WFP should have been the responsibility of the DENR. This document is one of the output of the Survey, Planning and Mapping. The POs may prepare the WFP as part of their bid proposal but not as a responsibility. It is the function and responsibility of the DENR to prepare the Approved Budget for the Contract (ABC) based on the Plans and Specifications and cost estimates for the project.</p> <p>Also, the conduct of photo documentation (before, during and</p>	<p>The WFP prepared by the POs may not be reliable and maybe bias. Likewise, the POs may lack the scientific knowledge specifically in the seedling productions and planting, especially for indigenous trees which is not a commonly planted trees. It's the DENR who has the expertise on the matter.</p> <p>The provision under 5.2.1 is not also aligned to the procedures under Chapter II: Implementing Guidelines on Negotiated Procurement – Community Participation of the</p>

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p>5.2.5 Ensure at least 85% survival of established plantations;</p> <p>5.2.6 Prioritize the employment of indigenous peoples (IPS) and members of organized upland communities within the area vicinity, whenever possible;</p> <p>5.2.7 Provide equal opportunities for both men and women to participate in the development process;</p> <p>5.2.8 Conduct photo documentation (before, during and after planting) and geo-tagging of established plantations;</p> <p>5.2.9 Submit to the DENR monthly physical and financial Accomplishment Reports; and</p> <p>5.2.10 Submit annual audited financial report and notarized accomplishment report.</p>	<p>after planting) and geo-tagging of established plantations is a responsibility of the DENR and not by the partner. The partner may document the status of accomplishments of the projects as a supporting document to the progress billing for the contract.</p>	<p>Community Participation Procurement Manual (CPPM) prescribed under GPPB Resolution No. 09-2014.</p> <p>While DENR MC No. 2013-06 was issued in April 16, 2013 and the GPPB Resolution 09-2014 took effect on May 23, 2014, it is still necessary for the DENR to amend its guidelines to align with the procedures prescribed in the CPPM since GPPB Resolution 09-2014 prescribed the implementing guidelines for negotiated procurement under Section 53.12 of the 2009 Revised IRR of Ra 9184, the same provision adopted by the DENR as stated in para. 3.1.1 of DENR MC No. 2013-06 (see above).</p> <p>As stated in paragraph 3 of the letter dated 5 May 2014 of Mr. Dennis S. Santiago, Executive Director V, DBM, GPPB Technical Support Office, and we quote:</p> <p><b><i>"Please be advised that per GPPB Resolution No. 13-2013, the DENR CPPOM shall remain effective only until the GPPB issues a set of Guidelines to provide the procedures for the implementation of Negotiated Procurement through Community Participation under Section 53.12 of the revised Implementing Rules and Regulations of Republic Act No. 9184."</i></b></p> <p>Therefore, it is very clear that the DENR should amend its NGP guidelines to align its procurement procedures with the GPPB Resolution No. 09-2014, which was approved on May 23, 2014. This shall also apply to all the provisions under Section 4 of the same DMC.</p> <p>Moreover, while the POs conduct photo documentation (before, during and after planting) and geo-tagging of established plantations but only as a supporting documents to the billing and not as their responsibility. It should be the basic responsibility of the DENR to perform such activity.</p>

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
<p><b>Section 6. Turn-over of the Project Area to the DENR</b></p>	<p>After the contract duration, the area shall be subjected to performance evaluation by a third party to be identified by the DENR. If conditions in the contract have been complied, the area shall be turned-over to the DENR. [All areas turned over to the DENR shall be bided to interested parties in accordance to RA 9184 for long term development of the area. Thereafter, an appropriate legal instrument shall be issued by the DENR for the sustainable management of the area.]</p>	<p>The provision in Sec. 6 of DMC 2013-06 that "All areas turned over to the DENR shall be bided to interested parties in accordance to RA 9184 for long term development of the area. Thereafter, an appropriate legal instrument shall be issued by the DENR for the sustainable management of the area" are misplaced provisions and lack the legal basis since these are not aligned with Section 3.1.2 of E.O. No. 26, which provides that, "<u>the People's Organizations (POs) shall be given the primary responsibility of maintaining and protecting the established plantations.</u>"</p>	<p>The said provision lack the legal basis. There is no authority given to the DENR to bid and dispose of NGP Established plantations. Section 5 of E.O. 26 provides for the Partner Agencies/Stakeholders. It states that:</p> <p><i>"The NGP shall be implemented in partnership with the following agencies/stakeholders, whose responsibilities shall include but not limited to the following:</i></p> <p><b>5.1 DA-DAR-DENR</b></p> <p>5.1.1 Nursery establishment  5.1.2 Site Identification  5.1.3 Social mobilization  5.1.4 Tree planting  5.1.5 Monitoring and evaluation  5.1.6 Technical support and evaluation  5.1.7 Provision of certified seeds of agronomic crops  5.1.8 Provision of access roads  5.1.9 Provision of post-harvest and processing facilities  5.2.10 Technical assistance in product development and marketing</p> <p>Likewise, the provisions appears to be ambiguous and misplaced. There was no premise why there is a need for the turned-over NGP projects to be bided to interested parties.</p>
	<p>On the other hand, should the Partner fail to comply with the terms and conditions of the contract, the area shall likewise be turned-over to the DENR; and the unreleased funds and retention fee amounting to 10% of the contract shall be forfeited in favor of the government without prejudice to the filing of appropriate sanction against the contractor and they shall not be allowed to engage in any similar activity or project</p>	<p>Chapter II of the CPPM, specifically Sub-Item F. Contract Implementation under Item 2.3 Procedural Guidelines / requirements for the use of Negotiated Procurement – Community Participation provides the following:</p> <p><i>"13. Advance payment may be released in an amount not exceeding fifteen percent (15%) of the total contract price provided it is included in the contract.<sup>5</sup></i></p> <p><i>14. The community-based service provider shall submit progress billing or statement of work</i></p>	<p>Based on the said provisions of the CPPM, <u>the unreleased funds refer to the unbilled contract amount while the 10% retention fee is the amount deducted from each progress billing of the contract.</u> Therefore, the remaining balance should be the unbilled contract amount plus the 10% Retention Fee and not just the Retention Fee, which is equal to 10%.</p> <p>Moreover, the provision is not clear and it can be understood as "<u>the unreleased funds and retention fee amounting to 10% of the contract</u>" is equal to 10% of the contract amount</p>

<sup>5</sup> Annexes "D" and "E" of the revised IRR of RA 9184.

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	DENR shall then issue the appropriate legal instrument for the long term sustainable management of the area.	Again, not provided in E.O. 26, therefore, lack the legal basis.	
<b>Annex 1 &amp; 2 of DENR MC NO. 2013-06</b>		Annexes 1 and 2 of the DMC provide the template of NGP contracts with the engagement of partners	
<b>ARTICLE I - OBJECTIVES, SCOPE AND COVERAGE</b>			
Section 1. Objectives.	The Partnership Agreement/ contracting intends to accelerate/hasten the attainment of 1.5 billion seedling production and 1.5 million hectares plantation establishment at the end of 2016 of the National Greening Program through the engagement of services of People's Organizations, Local Government Units and Other Government Entities, herein referred to as Partners.	none	
Section 2. Scope and Coverage.	The DENR shall engage services of the Partner for comprehensive site development of degraded/ denuded forestlands covering hectares located in _____  (indicate barangay, town and province)	This needs to be specific, with complete description of the area contracted for NGP Tree Plantation including its latitude and longitude, the number of seedlings and type of species to be planted as determined by the DENR.	With complete description of the area covered, the species planted and the distance between trees.
ARTICLE II FUNDING	Section 3. For the execution of this undertaking under this Agreement, the DENR shall make available financial assistance of _____ Pesos (Php_____). The payments shall be made as follows:	Section 3 of the Annexes 1 & 2 provides that <i>"For the execution of this undertaking under this agreement, the DENR shall make available financial assistance of _____ Pesos (Php_____)"</i> . Further, Section 4 also provides that <i>"The DENR shall be responsible for the following: xxx c. Provide technical and financial assistance subject to the approved Work and Financial Plan (WFP);"</i>  However, the contracts were chargeable to the Capital Outlay appropriated for the NGP in the Annual GAA.	The said two provisions of the Annex 1 & 2 of the DMC No. 2013-06 depart from Section 60 of the General Appropriations Act since the fund earmarked annually for NGP projects were "Capital Outlay", which is a government investment or capital expenditures, therefore, it cannot be used for providing financial assistance.  Moreover, it is inconsistent with Section 5, paragraph 5.1.3 of DMC No. 2013-06, which is the main provision, which states that:  <i>"5.1.3 Provide funds for the comprehensive site development</i>

Section	Existing provision per DMC No. 2013-06			Observation	Analysis and Conclusion
	Schedule of Release	Activities	Schedule		
	1 <sup>st</sup> release	15% of the project cost for mobilization to be released for seedling production	Upon signing of the agreement/ contract		<p><i>subject to the approved Work and Financial Plan (WFP);"</i></p> <p>The main provision as cited above does not mention of the financial assistance. Likewise the payment for the NGP contracts were charged to capital outlay but what was provided in the contract is a <b>financial assistance to POs</b>, hence, said transactions are considered irregular as defined under COA Circular No. 2012-03.</p> <p>Section 3 also presents the Schedule of Payment Releases; however, <b>additional conditions or required documents prior to the release of each tranches were not included</b> such as: the submission of Status of Work Accomplished and Performance Validation Report of the DENR for each progress billing; For final billing, Inspection and Acceptance Report by the responsible RO/PENRO/CENRO, Performance Validation Report of the DENR and other documentary requirements in accordance with accounting and auditing rules and regulations to ensure that the Project Partners completed the project activities corresponding to the funds released in advance to them (15% mobilization) prior to the next release of funds.</p> <p>In other words, payment of contracts is not based on progress billing of actual works accomplished but rather certain percentage per schedule of release under Sec. 3, Article II, Funding under Annex 1 and 2 of DENR MC No. 2013-06, which is not in accordance with the 2009 IRR of RA 9184 and the Chapter 10 of the GAM for NGAs.</p>
	2 <sup>nd</sup> release	40% of the project cost to support the care and maintenance of seedlings and site preparation	Two months after 1 <sup>st</sup> release		
	3 <sup>rd</sup> release	40% of the project cost to support the care and maintenance of seedlings and site preparation	Five months after 2 <sup>nd</sup> release		
	4 <sup>th</sup> release	15% of the project cost for 2 <sup>nd</sup> and 3 <sup>rd</sup> year maintenance and protection of established plantations	Start of year 2		
	5 <sup>th</sup> release	10% of the project cost after performance evaluation is completed by a third party and at least 85% survival is attained	After end of the 3 <sup>rd</sup> year		
<b>ARTICLE III ROLES AND RESPONSIBILITIES</b>					
Section 4.	The DENR shall be responsible for the following:  a. Conduct survey, mapping and planning and prepare		The responsibility to prepare Work and Financial Plan (WFP) including all the project components, technical specifications or scope of work of tree plantations with cost estimates and contract packaging		The responsibility to prepare Work and Financial Plan (WFP) including all the project components, technical specifications or scope of work of tree plantations with cost estimates and contract packaging are the

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	<p>GIS-generated maps of the area which shall form as integral part of this Agreement.</p> <p>b. Ensure compliance of the development partners to the terms and conditions of the MOA/contract;</p> <p>c. Provide <b>technical and financial assistance</b> subject to the approved Work and Financial Plan (WFP); and</p> <p>d. Conduct regular monitoring and evaluation</p>	<p>are lodge with the Project Partners or the contractors instead of the DENR preparing the required documents for the contracts.</p> <p>Financial assistance is to be charged to MOOE. However, the funds appropriated for the NGP Projects' Implementation were capital outlay, therefore, these terms are inappropriate.</p> <p>In the conduct of regular monitoring and evaluation, it is not specific as to what report to be prepared, who prepares it and where to be rendered or submitted.</p>	<p>responsibility of the DENR. In no way that it shall be given to the contractors since these are their basis in establishing the Agency Budget for the Contract.</p> <p>Moreover, the provision under item c) "<i>Provide technical and financial assistance subject to the approved Work and Financial Plan (WFP)</i>" is somewhat defective considering that the contract is for Comprehensive Site Development Activities and to be funded from the capital outlay.</p> <p>Considering the ambiguity of the provisions of the contract, implementation would be difficult since no one is identified to be responsible for a certain task.</p>
Section 5.	<p>The Partner shall:</p> <p>a. Submit the Work and Financial Plan (WFP) for approval of the DENR which shall form part of this Memorandum of Agreement;</p> <p>b. Produce quality seedlings of (indicate species) following the standards prescribed by the DENR;</p> <p>c. Establish plantations covering _____ hectares in _____;</p> <p>d. Maintain and protect established plantations covering _____ hectares;</p> <p>e. Ensure at least 85% survival of established plantations;</p> <p>f. Prioritize the employment of indigenous peoples (IPs) and members of organized upland</p>	<p>As stated earlier, the preparation of WFP is not a responsibility of the contractor or the project partners but of the implementing agency or the DENR.</p> <p>It is not also clear how many seedlings to be planted in the subject area.</p>	<p>The provision that "<i>Partner shall submit the Work and Financial Plan (WFP) for approval of the DENR which shall form part of this Memorandum of Agreement</i>" is likewise defective. The WFP to be submitted by the Partner is part of his bid proposal. It is the WFP prepared by the DENR, which is the basis of an Approved Budget for the Contract (ABC) and that will form part or an integral part of the contract.</p>

Section	Existing provision per DMC No. 2013-06	Observation	Analysis and Conclusion
	communities within the area vicinity, whenever possible; g. Provide equal opportunities for both men and women to participate in the development process; h. Conduct photo documentation (before, during and after planting) and geo tagging of established plantations; i. Submit to the DENR monthly physical and financial Accomplishment Reports; and j. Submit annual audited financial report and notarized accomplishment report.		

We also noted some policy gaps, such as, but not limited to the following:

1. Changes in the modality of the projects' implementation from social mobilization in DMC No. 2011-01 to Comprehensive Site Development (CSD) contracts without the amendment of the provision in E.O. 26, thus, changed in the modality has no legal basis;
2. No provision on the turned-over of the Projects after the duration of the contract, and the required documents for the turn-over of the NGP projects;
3. No legal sanctions for non-completion of the NGP projects within the contract period;
4. Absence of provision on the procedures for the reporting of damaged/destroyed properties and the filing for request/petition for relief from accountability thus, relief from accountability were not filed before the Commission;
5. No prescribed procedures for the conduct of performance validation on the reported accomplishments of the Project Partners either external (third party) or internal validation Team, and the composition of the Validation Team;
6. Presence of defective provision particularly in the inclusion of existing tenured areas as NGP project sites; and,
7. Absence of provision defining the duties and responsibilities of DENR officials responsible and accountable for the NGP projects after these were turned-over by the implementing partner to the DENR.

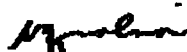
Thus, resulted in the non-compliance with the mandate in Section 2 of said E.O. and other negative effects to the program's implementation, as follows: 1) payments of full contract amount to Partners (Contractors) for projects that failed to meet the terms and conditions of the contract as well as non-deduction of 10% retention fee for some contracts; 2) advance payments of contracts; 3) planting of more production/exotic trees and high-value crops than indigenous trees; 4) establishment of NGP tree plantations on areas with existing tenurial contracts issued; 5) abandonment of some NGP Tree plantations after the expiration of the three years Comprehensive Site Development (CSD) contract; 6) request for relief from accountability were not filed since nobody is taking responsibility over the NGP projects; and, other negative impacts to the NGP.

**We recommend that Management:**

- a. revisit all the provisions of DENR MC No. 2013-06, as discussed in the above table;
- b. ensure that all provisions of the guidelines aligns with the provisions in E.O. No. 26, otherwise, work for the amendment of said E.O. to meet the requirements of the actual field conditions; and
- c. fill-in the policy gaps, such as but to limited to, provisions for filing request for relief from accountability, defining the duties and responsibilities of DENR officials responsible and accountable for the NGP projects, NGP sustainability provisions, among others.

In view of the foregoing, we would like to request for your reply/reasons on the above gaps/non-aligned/ambiguous/defective provisions of the DMC No. 2013-06 within five (5) calendar days from receipt hereof. Please email at [coadenr2@gmail.com](mailto:coadenr2@gmail.com), [ashley72702@yahoo.com](mailto:ashley72702@yahoo.com) and [maodtojan1963@gmail.com](mailto:maodtojan1963@gmail.com).

Thank you.

  
**VIOLAY Q. MOLINA**  
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**MARITES A. ODTOJAN**  
Team Supervisor

MAO/VQM  
AOM\_DMC No. 2013-06