



CIRCULAR 08-2017

31 July 2017

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 : Government Employees' Cooperatives Participation in Government Procurement

1.0 Purpose

This Circular is being issued to clarify the government employees' cooperatives participation in government procurement.

2.0 Coverage

All 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.

3.0 Cooperatives Participation in Government Procurement

- 3.1 Republic Act (RA) No. 9184 is governed by the principle of competitiveness, which means extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.
- 3.2 Under Sections 23.4.1.1(d), 23.4.2.1(d) and 24.3.1(d) of the 2016 Revised Implementing Rules and Regulations (IRR) of RA 9184, cooperatives duly organized under the laws of the Philippines may participate in the procurement of goods, infrastructure projects and consulting services, respectively.
- 3.3 GPPB Circular 02-2010, entitled "Guidelines on Comparison of Bids Submitted by Cooperatives", clarifies the procedure for comparison of bids submitted by cooperatives in line with the principle that all bids shall be evaluated on equal footing to ensure fair and competitive bid comparison.

- 3.4 Thus, Government employees' cooperatives may participate in the procurement opportunities of the government provided that they meet all the requirements prescribed under the 2016 Revised IRR of RA 9184, and they are evaluated on equal footing with other bidders, subject to existing laws, rules and regulations;

4.0 Cooperatives' Exemption from Pre-Qualification

- 4.1 Pursuant to Article 62, par. 10 of RA 9520 or the "Philippine Cooperative Code of 2008", cooperatives transacting business with the Government of the Philippines or any of its political subdivisions or any of its agencies or instrumentalities, including government-owned and controlled corporations, shall be exempt from pre-qualification bidding requirements notwithstanding the provisions of RA 9184.
- 4.2 However, RA 9184 already abolished the pre-qualification process, which was required under Presidential Decree No. 1594 for infrastructure projects and Executive Order No. 302 for goods, and was replaced by simple eligibility checking.
- 4.3 The legislative intent of RA 9184 is to subject bidders, such as cooperatives, to simple eligibility check, which utilizes an objective and non-discretionary pass or fail criterion in the examination of eligibility documents submitted by the bidder.
- 4.4 Since the exemption granted to cooperatives was only limited to pre-qualification, there is no exemption from which cooperatives can rely on.

5.0 Limitation on Participation in Government Procurement

- 5.1 Under Section 47 of RA 9184 and its IRR, bidders are automatically disqualified from participating in the procurement activities of a Procuring Entity when such bidder is related by consanguinity or affinity within the third civil degree to the Head of the Procuring Entity (HOPE), members of the BAC, the Technical Working Group (TWG), and the BAC Secretariat, the head of the Project Management Office (PMO), or the end-user unit, and the project consultants, if any. If the bidder is a cooperative, the provision applies to all its officers, directors, and controlling shareholders or members.
- 5.2 Section 47.2 of the 2016 Revised IRR of RA 9184 and the relevant provision of the Philippine Bidding Documents (PBDs) mandate that bidders found to have conflicting interests with each other shall also be disqualified to participate in the procurement. A general conflict of interests arises when a bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another bidder or influence the decisions of the Procuring Entity regarding this bidding process.

- 5.3 Under Sec. 3(i) of RA 6713 or the "Code of Conduct and Ethical Standards for Public Officials and Employees", a conflict of interest occurs when the official or employee is a member of the Board of Directors and the interest of such corporation or business, or the official or employees' rights or duties therein, are opposed to or affected by the faithful performance of official duty. In the event that a conflict of interest arises, the official or employee involved shall resign from his position and/or divest himself of his shareholdings or interest within the prescribed period, reckoned from the date when the conflict of interest had arisen. In any case, it shall be incumbent for any public official or employee to avoid conflict of interest at all times.
- 5.4 Government employees' cooperatives participating in the procurement within their own agencies poses undue advantage in terms of access to information, which are generally not available to other bidders, and it sows suspicion of partiality or familiarity among market operators participating in the procurement process. The determination of the existence of a conflict of interest is essentially and primarily lodged with the BAC of the Procuring Entity.
- 5.5 Accordingly, government employees' cooperatives participation in government procurement, especially within their own respective agencies, is restricted by reason of presence of conflict of interest, which shall be determined by the BAC of the Procuring Entity taking into consideration the surrounding circumstances and applying the relevant provisions of the 2016 Revised IRR of RA 9184, the PBDs, RA 6713 and other applicable rules.
- 6.0 This Circular shall take effect fifteen (15) days following the publication in Official Gazette or a newspaper of general nationwide circulation.
- 7.0 For guidance and compliance.

(SGD)
BENJAMIN E. DIOKNO
Chairperson