

APPROVING THE ISSUANCE OF AN OFFICIAL POSITION PAPER ON THE ALLEGED ANOMALIES BEHIND THE PROCESSING OF THE PHILIPPINE E-PASSPORT PROJECT OF THE DEPARTMENT OF FOREIGN AFFAIRS IN RELATION TO HOUSE RESOLUTION NO. 1608

WHEREAS, a letter¹ to the Department of Budget and Management (DBM) together with a copy of the House Resolution (HR) No. 1608 adopted by the House of Representatives Committee on Public Accounts to conduct an investigation, in aid of legislation, on the alleged anomalies behind the slow passport processing of the Department of Foreign Affairs (DFA) was transmitted to the Government Procurement Policy Board (GPPB) through its Technical Support Office (TSO) on 26 February 2021 via electronic mail;

WHEREAS, as stated in the foregoing letter, the House Committees on Good Government and Public Accountability and the DFA have jointly deliberated on the legality of the Joint Venture Agreement (JVA)² between the Asian Productivity Organization (APO) Production Unit, Inc., a government-owned and controlled corporation under the supervision and control of the Presidential Communications Operations Office (PCOO), and the United Graphic Expression Corporation (UGEC), a privately-owned printing press;

WHEREAS, on 26 February 2021, the House Committee on Public Accounts, through the DBM Department Liaison Office-House of Representatives, requested for the official Position Paper of the GPPB containing the narrative of events as well as all documents in the possession of the GPPB pertaining to the approval of the Board on the request of the DFA to resort to Negotiated Procurement (Agency-to-Agency) in the procurement of the New E-Passport System from APO Production Unit, Inc.;

WHEREAS, on 3 March 2021, upon coordination with Committee Secretary Francis Cancio, the House Committee on Public Accounts amended its request and sought the submission of the following:

1. Letter narrating the events and copies of documents relative to the approval of the Board of the request of the DFA to resort to Negotiated Procurement (Agency-to-Agency) in the procurement of the New E-Passport System from APO Production Unit, Inc. to be submitted on 3 March 2021 for the scheduled Committee hearing on 4 March 2021; and
2. Official Position Paper of the GPPB on the legality of the JVA between APO Production Unit Inc. and the UGEC to be submitted on 15 March 2021;

WHEREAS, on 4 March 2021, the GPPB-TSO sent a Letter Reply to the House Committee on Public Accounts relative to the approval of the Board on the request of the DFA to resort to Negotiated Procurement (Agency-to-Agency) in the procurement of the New E-Passport System from APO Production Unit, Inc, containing the following events;

1. On 9 March 2015, the GPPB-TSO received the letter of the DFA requesting the approval of the GPPB to resort to Negotiated Procurement (Agency-to-Agency) under Section 53.5 of the IRR of RA No. 9184 with APO Production Unit, Inc. in the procurement of the New E-Passport System with an Approved Budget for the Contract

¹ Dated 23 February 2021.

² Allegedly entered into on 27 November 2014 based on HR No. 1608.

(ABC) of Eight Hundred Eighty-Seven Million Two Hundred Thousand Pesos (P887,200,000.00);

2. In the same letter request, the DFA relayed that the PCOO identified and appointed APO as the exclusive Recognized Government Printer (RGP) mandated to print Accountable Forms and High Sensitive/Volume printing requirements of the Philippine government agencies;
3. On 10 March 2015, the GPPB-TSO informed the DFA that under Section 24 of the General Appropriations Act (GAA) of Fiscal Year (FY) 2015, the printing of accountable forms shall only be undertaken by the RGPs, subject to the Guidelines on the Procurement of Printing Services;³
4. On 17 March 2015, the DFA request was presented to the GPPB Review Committee (GRC) for an initial deliberation, but the GRC deferred action on the request pending clarification on some issues and documents from the DFA;
5. On 5 August 2015, the GRC conducted another meeting where the DFA claimed that the proposed procurement project is more than the printing of Accountable Forms, and thus, should be undertaken by a government office for security purposes;
6. Through GRC Memorandum No. 04-2015,⁴ the GRC unanimously recommended to the GPPB the approval of the DFA request upon finding that the justifications presented by the DFA sufficiently complied with the requirements under Section 53.5 of the IRR of RA No. 9184 in relation to the FY 2015 GAA provisions and the Guidelines on the Procurement of Printing Services, subject to the submission of additional documentary requirements;
7. In a letter to the DFA, dated 7 August 2015, the GPPB-TSO, upon further review of the initial documents submitted by the DFA, also requested for the submission of its Annual Procurement Plan (APP) and Project Procurement Management Plan (PPMP), Bids and Awards Committee Resolution, and Terms of Reference indicating the detailed scope of work, to conform with the changes on the details of the project;
8. Through a letter dated 14 August 2015, the GPPB-TSO requested the DFA to submit its proposed or indicative APP for 2016 and the end-user's PPMP for 2016, noting that the duration of the contract under consideration is for Calendar Year 2016-2026 and the ABC corresponds to the Multi-Year Obligation Authority (MYOA) in the amount of P38,527,611,448.00;
9. During a Special GPPB Meeting, after taking into consideration the GRC findings, the documents submitted by the DFA, the justifications propounded by the DFA relative to its request, and the coverage of Section 24 of the General Provisions of the FY 2015 GAA, the Board, through GPPB Resolution No. 25-2015,⁵ unanimously approved to grant the DFA's request, subject to the following conditions:
 - a. the approval is limited to the method of procurement only and the DFA may enter into an Agency-to-Agency Agreement with any Qualified RGP;
 - b. the appropriate RGP engaged by the Procuring Entity (PE) shall directly undertake the printing of services for the contracts entered into, and cannot engage, subcontract, or assign any private printer to undertake the performance of the printing service; and
 - c. no award shall be made until the GAA for FY 2016 has been approved.

WHEREAS, the GPPB through its TSO likewise furnished the Honorable Committee with the following copies of documents in its possession pertaining to the request of the DFA on the procurement of the New E-Passport System involving the APO Production Unit, Inc., *to wit*:

1. DFA letter requesting for approval of the Agency to Agency Agreement between the DFA and APO Production, Inc. dated 5 March 2015;
2. GPPB-TSO letter to DFA dated 10 March 2015;
3. DFA submission of documents for the GRC Meeting;

³ GPPB Resolution No. 05-2010 dated 29 October 2010 and published on 08 January 2011 in The Philippine Star.

⁴ Dated 5 August 2015.

⁵ Dated 20 August 2015.

4. GPPB-TSO letter to DFA requesting dated 25 March 2015;
5. DFA letter forwarding to the GPPB additional documents to support the request for printing services of APO Production Unit, Inc. dated 23 July 2015;
6. DFA letter regarding the submission of additional documentary requirements as requested by the GPPB-TSO dated 12 August 2015;
7. GPPB-TSO letter to DFA acknowledging receipt of additional documentary requirements submitted by the DFA dated 14 August 2015;
8. DFA reply letter dated 17 August 2015;
9. Presidential Anti-Corruption Commission (PACC) Subpoena Duces Tecum with stamp received 16 September 2019;
10. PACC Show Cause Order with stamp received 20 September 2019;
11. GPPB-TSO letter reply to Office of the President PACC dated 20 September 2019;
12. GPPB Resolution No. 25-2015;
13. GRC Memorandum No. 04-2015 dated 5 August 2015;
14. Minutes of the GRC Meeting on 17 March 2015;
15. Minutes of the GRC Meeting on 5 August 2015;
16. Relevant Portions of the Minutes of the 5th Regular GPPB Meeting on 18 August 2015; and
17. Relevant Portions of the Minutes of the Special GPPB Meeting on 20 August 2015.

WHEREAS, based on the foregoing, it is clear that the GPPB's involvement on the subject request is only with respect to the approval of the use of the DFA's Agency-to-Agency Agreement with APO Production Unit, Inc. for the procurement of the New E-Passport System. It did not include nor relate to the JVA executed between APO Production Unit, Inc. and UGEC;

WHEREAS, during the 2nd GPPB Meeting on 4 March 2021, the GPPB discussed the request of the House Committee on Public Accounts for an official Position Paper on the DFA E-Passport Project as well as the discussion to be included therein. The GPPB-TSO recommended for the GPPB to issue an official Position Paper stating the following:

1. that the GPPB cannot rule on the legality of the JVA on the following grounds:
 - a. the subject of the GPPB approval pursuant to Section 8 of Executive Order (EO) No. 423⁶ covers only the request of the DFA to resort to an alternative method of procurement for its New E-Passport System, particularly the Negotiated Procurement (Agency-to-Agency) under Section 53.5 of the 2016 revised IRR of RA No. 9184;
 - b. the GPPB and its TSO are not privy to the JVA between APO Production Unit, Inc. and UGEC, as the JVA in question was executed between APO Production Unit, Inc. and UGEC, and the Agency-to-Agency Agreement was contracted by DFA with APO Production Unit, Inc., being a RGP; and
 - c. the Board, having no jurisdiction to rule on the propriety, validity, and legality of the agreements entered into by procuring entities cannot rule nor opine on the legality of the JVA between the APO Production Unit, Inc. and the UGEC, as this requires the exercise of quasi-judicial

⁶ Entitled "Repealing Executive Order No. 109-A Dated September 18, 2003 Prescribing the Rules on Rules and Procedures on the Review and Approval of all Government Contracts to Conform with Republic Act No. 9184, Otherwise Known as the Government Procurement Reform Act," as amended by EO No. 645, Series of 2007, and further amended by EO No. 34, Series of 2017.

functions or investigatory powers under the law, which is not granted to the GPPB or its TSO under RA No. 9184 or other laws.

2. One of the conditions imposed by the GPPB on the approval of the request of the DFA to resort to Negotiated Procurement (Agency-to-Agency) modality is that APO Production Unit, Inc. cannot subcontract or assign any part of the contract to a third party. Thus, if the effect of the terms of the JVA between APO Production Unit, Inc. and UGEC is tantamount to subcontracting, then it will not be in compliance with the conditions set by the GPPB when it approved the request of the DFA to resort to Negotiated Procurement (Agency-to-Agency) modality with APO Production Unit, Inc., pursuant to GPPB Resolution No. 25-2015.⁷

WHEREAS, after careful review and deliberations, the Board resolved to approve the issuance of an official Position Paper on the legality of the JVA between APO Production Unit, Inc. and UGEC for the new E-Passport printing services of the DFA in relation to House Resolution No. 1608 containing the abovementioned matters;

NOW, THEREFORE, for and in consideration of the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US**, by law and other executive issuances, hereby **RESOLVE**, to confirm, adopt, and approve, as **WE**, hereby confirm, adopt, and approve the issuance of a Position Paper, copy of which is hereto attached as Annex "A," addressed to the House Committee on Public Accounts to be signed by the GPPB Chairperson, on the legality of the JVA between APO Production Unit, Inc. and UGEC for the new E-Passport printing services of the DFA in relation to HR No. 1608 stating the following:

1. that the GPPB cannot rule on the legality of the JVA on the following grounds:
 - a. the subject of the GPPB approval pursuant to Section 8 of EO No. 423 covers only the request of the DFA to resort to an alternative method of procurement for its New E-Passport System, particularly the Negotiated Procurement (Agency-to-Agency) under Section 53.5 of the 2016 revised IRR of RA No. 9184;
 - b. the GPPB and its TSO are not privy to the JVA between APO Production Unit, Inc. and UGEC, as the JVA in question was executed between APO Production Unit, Inc. and UGEC, and the Agency-to-Agency Agreement was contracted by DFA with APO Production Unit, Inc., being a RGP;
 - c. the Board, having no jurisdiction to rule on the propriety, validity, and legality of the agreements entered into by procuring entities cannot rule nor opine on the legality of the JVA between the APO Production Unit, Inc. and the UGEC, as this requires the exercise of quasi-judicial functions or investigatory powers under the law, which is not granted to the GPPB or its TSO under RA No. 9184 or other laws. and

⁷ Entitled: "Approving the Request of the Department of Foreign Affairs to Resort to Negotiated Procurement under Section 53.5 (Agency-To-Agency) of the revised IRR of Republic Act No. 9184," dated 20 August 2015.

2. if the effect of the terms of the JVA amounts to subcontracting, then it will not be in compliance with the conditions set by the GPPB when it approved the request of the DFA.

This Resolution shall take effect immediately.

APPROVED this 4th day of March 2021 at Manila City, Philippines.

Sgd.

WENDEL E. AVISADO
GPPB, Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

Sgd.

LAURA B. PASCUA
Alternate to the Chairperson
**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

Sgd.

DEPARTMENT OF HEALTH

Sgd.

**DEPARTMENT OF INTERIOR AND LOCAL
GOVERNMENT**

Sgd.

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

Sgd.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

Sgd.

**DEPARTMENT OF TRADE AND
INDUSTRY**

DEPARTMENT OF TRANSPORTATION

Sgd.

**DEPARTMENT OF INFORMATION AND
COMMUNICATION TECHNOLOGY**

Sgd.

PHILIPPINE SPACE AGENCY

Sgd.

PRIVATE SECTOR REPRESENTATIVE

**Position Paper
of the
Government Procurement Policy Board
on
House Resolution No. 1608**

Title of the Resolution:

A Resolution Urging the Committee on Good Government and Public Accountability to Conduct an Investigation, in Aid of Legislation, on the Alleged Anomalies behind the Slow Passport Processing of the Department of Foreign Affairs (DFA)

Proponent of the Resolution:

Representative Carlos Isagani T. Zarate

Salient Features of the Resolution:

The Committee on Good Governance and Public Accountability of the House of Representatives shall investigate, in aid of legislation, the slow processing of passports and the purported anomaly in the printing thereof.

Findings, Comments, and Recommendation:

At the outset, it bears emphasis that the Government Procurement Policy Board (GPPB)'s authority with respect to the Electronic Passport (ePassport) project covers only the approval of the request of the Department of Foreign Affairs (DFA) to resort to Negotiated Procurement (Agency-to-Agency)⁸ modality, pursuant to Section 8 of Executive Order (EO) No. 423.⁹ The Board, having no jurisdiction to rule on the propriety, validity, and legality of the agreements entered into by procuring entities cannot rule nor opine on the legality of the Joint Venture Agreement (JVA) between the Asian Productivity Organization (APO) Production Unit, Inc. and the United Graphic Expression Corporation, as this requires the exercise of quasi-judicial functions or investigatory powers under the law, which is not granted to the GPPB or its Technical Support Office (TSO) under Republic Act No. 9184¹⁰ or other laws.

Moreover, the GPPB and its TSO are not privy to the JVA, as not being parties thereto. The Board's role is limited to the approval of the method of procurement, i.e. Negotiated Procurement (Agency-to-Agency) for the procurement of the printing services of APO for the ePassport. And among the conditions for the approval includes the prohibition on subcontracting for Agency-to-Agency Agreements.¹¹ Thus, should the effect of the terms of the JVA amount to subcontracting, the same will result in non-compliance with the conditions of the GPPB approval under the Consolidated Guidelines on Alternative Methods of Procurement¹² on the DFA request to resort to Negotiated Procurement (Agency-to-Agency) modality. Subcontracting occurs when a person has contracted for the performance of certain work and he in turn engages a third party to perform the whole or a part of that which is included in the original contract.

⁸ The alternative method of procurement under Section 53.5 of the 2016 revised Implementing Rules and Regulations (IRR) of RA No. 9184.

⁹ Entitled "Repealing Executive Order No. 109-A Dated September 18, 2003 Prescribing the Rules on Rules and Procedures on the Review and Approval of all Government Contracts to Conform with Republic Act No. 9184, Otherwise Known as the Government Procurement Reform Act," as amended by EO No. 645, Series of 2007, and further amended by EO No. 34, Series of 2017.

¹⁰ Entitled the "Government Procurement Reform Act."

¹¹ Item 5.b.v under the Specific Guidelines of the Consolidated Guidelines on Alternative Methods of Procurement.

¹² Annex "H" of the 2016 revised IRR of RA No. 9184.