



**APPROVING THE ISSUANCE OF A CIRCULAR CLARIFYING THE
GOVERNMENT EMPLOYEES' COOPERATIVES PARTICIPATION IN
GOVERNMENT PROCUREMENT**

WHEREAS, the Government Procurement Policy Board – Technical Support Office (GPPB-TSO) received copy of letters of Cooperative Development Authority (CDA) to the following government agencies and cooperatives in response to the query about the participation of employees' cooperatives in bidding activities of the government, thus:

1. Bureau of Fisheries and Aquatic Resources Central Office;
2. Bureau of Fisheries and Aquatic Resources – Region 4A;
3. Provincial Environment and Natural Resources Office (Palawan);
4. Agusan Sur Savers Multipurpose Cooperative; and
5. University of Southeastern Philippines Multipurpose Cooperative;

WHEREAS, the CDA Central Office adopted the opinion issued by its Calamba Extension Office on 23 August 2016, stating the following, among others:

1. Cooperative enjoys the privilege to participate in all procurement activities of any government agency or instrumentality;
2. Cooperatives should be exempted from pre-qualification bidding requirements because Article 62, par.10 of Republic Act (RA) No. 9520¹ is clear and unambiguous in granting such exemption;
3. By using the phrase “notwithstanding the provisions of Republic Act No. 9184”, RA 9520 expressly amends any provision of said law insofar as cooperatives are concerned;
4. A distinction should be made between the employees of government as bidders, and the cooperative, as the latter is a separate juridical personality. Therefore, a bid offered by the cooperative, regardless of the composition of its membership, should not be considered as a bid offered by employees of government; and
5. The opinion of GPPB has the same weight as the opinion of CDA Calamba Extension Office. More so as the said opinion is not considered as a policy.

¹ Cooperatives registered under this Code, notwithstanding the provisions of any law to the contrary, be also accorded the following privileges:

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(10) 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 prequalification bidding requirements notwithstanding the provisions of Republic Act No. 9184*, otherwise known as, the Government Procurement Act.

WHEREAS, the CDA Central Office also opined that it is not necessary that in order to avoid the existence of conflict of interest, employees cooperative should be disqualified automatically as the provision on the disclosure of interest under RA 9184 is the safeguard against conflict of interest, and explained that:

1. Automatically disqualifying employees cooperative as bidders will be inconsistent with the declared policy of RA 9520 on bringing about a strong cooperative movement that is free from any conditions that might infringe upon the autonomy or organizational integrity of cooperatives; and
2. Even if strictly applying RA 9184, the disqualification is limited to the relationship between the bidder and the head of the procuring entity by consanguinity or affinity up to the third civil degree, and not a question of direct access to information that may substantially affect the result of the bidding or procurement process.

WHEREAS, during the 5th Inter-Agency Technical Working Group (IATWG) Meeting on 14 July 2017, the GPPB-TSO presented the matter as well as the discussion on the relevant provisions of RA 9184, its 2016 Revised IRR, other related issuances and GPPB-TSO Non-Policy Matter (NPM) Opinions pertinent to the issues raised by the CDA;

WHEREAS, after due deliberation, the IATWG agreed to the proposal of the GPPB-TSO to recommend to the GPPB the issuance of a Circular containing the following:

1. Since RA 9184 had already abolished pre-qualification, there is nothing from which cooperatives will be exempted, *i.e.*, there is no exemption upon which cooperatives can rely on; and
2. Government employees' cooperatives may be allowed to participate in the procurement of any government agency provided they meet all the requirements prescribed under the rules, unless there is a determination by the BAC of the existence of a conflict of interest.

WHEREAS, during its 4th Regular Meeting on 31 July 2017, the GPPB, after careful review and due deliberation, adopted the recommendation of the IATWG and GPPB-TSO;

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, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the issuance of a Circular, copy of which is attached, informing the Procuring Entities of the following, among other information and reminders, thus:

1. Since RA 9184 had already abolished pre-qualification, there is nothing from which cooperatives will be exempted, *i.e.*, there is no exemption upon which cooperatives can rely on; and
2. Government employees' cooperatives may be allowed to participate in the procurement of any government agency provided they meet all the

requirements prescribed under the rules, unless there is a determination by the BAC of the existence of a conflict of interest.

This Resolution shall take effect immediately.

APPROVED this 31st day of July 2017 at the Pasig City, Philippines.

(SGD)

**DEPARTMENT OF BUDGET AND
MANAGEMENT**

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

(SGD)

(SGD)

DEPARTMENT OF EDUCATION

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

DEPARTMENT OF HEALTH

(SGD)

**DEPARTMENT OF INFORMATION AND
COMMUNICATIONS TECHNOLOGY**

**DEPARTMENT OF THE INTERIOR
AND LOCAL GOVERNMENT**

(SGD)

(SGD)

**DEPARTMENT OF NATIONAL
DEFENSE**

**DEPARTMENT OF PUBLIC WORKS
AND HIGHWAYS**

(SGD)

(SGD)

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

**DEPARTMENT OF TRADE AND
INDUSTRY**

(SGD)

DEPARTMENT OF TRANSPORTATION

PRIVATE SECTOR REPRESENTATIVE



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