

NPM No. 059-2017

21 December 2017

MS. APRIL LEGASPI
Lorenze01@yahoo.com

Re: Authority of the HOPE to Enter into Procurement Contracts -

Dear Ms. Legaspi:

This refers to your electronic mail inquiring as to who can authorize the Head of the Procuring Entity (HOPE) to enter into a negotiated contract after two (2) failure of biddings, or if there is a need for the *Sangguniang Bayan* to pass a resolution authorizing the HoPE to enter into contract.

Relative to your query, we wish to refer you to our earlier opinion¹ where we had the occasion to discuss that there is a need for the Local Chief Executive as Head of the Procuring Entity to secure authorization from the *Sanggunian* to enter into contracts. Such authorization may either be given in advance, through the Appropriation Ordinance; or just-in-time, through a separate approval if the Appropriation Ordinance describes the project in generic terms as jurisprudentially elucidated in the landmark case of *Quisumbing v. Garcia*², to wit:

R.A. No. 9184 establishes the law and procedure for public procurement. Sec. 37 thereof explicitly makes the approval of the appropriate authority which in the case of local government units, is the *Sanggunian*, the point of reference for the notice to proceed to be issued to the winning bidder. This provision, rather than being in conflict with or providing an exception to Sec. 22(c) of R.A. 7160, blends seamlessly with the latter and even acknowledges that in the exercise of the local government units' corporate powers, the chief executive acts merely as an instrumentality of the local council. Read together, the cited provisions mandate the local chief executive to secure the *sanggunian's* approval before entering into procurement contracts and to transmit the notice to proceed to the winning bidder not later than seven (7) calendar days.

...

The question of whether *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the

¹ Non-Policy Matter No. 017-2014, dated 5 May 2014.

² Hon. Gabriel Luis Quisumbing, et. al. vs. Hon. Gwendolyn F. Garcia Velasco, Jr., (In her capacity as Governor of the Province of Cebu), et. al., G.R. No. 175527, 8 December 2008.

project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, *no further authorization is required, the appropriation ordinance already being sufficient.* (Italics and emphasis supplied)

On the other hand, should the appropriation ordinance describe the projects in generic terms such as “infrastructure projects,” “inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects,” “reclamation projects” or “roads and bridges,” there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*. Specific *sanggunian* approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses.

Based on the foregoing, we wish to clarify that after the successful conduct of Negotiated Procurement (Two-Failed Biddings) by the BAC in accordance with Section 53.1 and Annex H of the 2016 IRR of RA 9184, there is a no need for the local chief executive or HOPE to secure a separate authorization from the Sanggunian if the Appropriations Ordinance as enacted by the Sanggunian already contains the authorization as when it includes in “sufficient detail the project and cost of a capital outlay”, and what is left to be performed by the local chief executive, after undergoing the procurement process, is to execute the contract. On the other hand, if the Appropriations Ordinance is couched on generic terms, without specificity as to the project and the exact project cost, then there is a need for the local chief executive to secure a separate authority from the Sanggunian pursuant to the mandate of Section 22(c), RA 7160, the Local Government Code.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours



DENNIS S. SANTIAGO
Executive Director V *WMA*