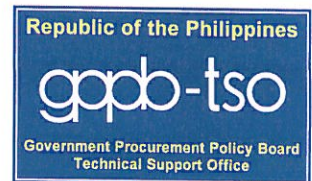




Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 069-2017

21 December 2017

MR. JAN MARK B. BUSA
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
Re: Procurement of Publication Service -

Dear Mr. Busa:

This refers to your electronic mail (e-mail) requesting for an opinion on whether the procurement of a publication service should undergo the usual process of competitive bidding if the expense is capitalized as cost of the property in case the BSP is declared the winning bidder by the Court, else it will be refunded by the other party declared by the Court as the winning bidder.

It is represented that various banks (commercial, rural, coop, etc.) obtain loan from BSP. As security for these loan obligations, these banks assign to BSP the loans of their end borrowers, including the collaterals. If these banks fail to fulfill their loan obligation, the BSP has the right to collect directly from the end borrowers of these banks. In addition, it is further represented that the BSP has the right to foreclose the properties (collateral) of the end borrowers. Foreclosure is done thru public auction. As creditor, the BSP participates and submits its bid price for the properties being foreclosed. During the foreclosure process, the BSP incurs publication expense but it is included as cost of the property if BSP is the winner, or refunded by the winning party. Hence, this request.

At the outset, we wish to clarify that the determination of the appropriate contractual arrangement to be used for a particular project rests within the authority and accountability of the Head of the Procuring Entity (HOPE), as the approving authority. We adhere to the position that no other agency, office or official may interfere with these functions of the HOPE and dictate the appropriate contractual arrangement or procurement method to be used for a particular project. Guided by the provisions of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), the Procuring Entity (PE), through the HOPE, is in the best position to determine the appropriate contractual arrangement for all its projects taking into consideration all the surrounding circumstances, whether it be a procurement contract or any other contractual arrangement.

As a general rule, RA 9184 shall apply to the procurement of goods and services, infrastructure projects, and consulting services, regardless of source of funds, whether local or foreign. For as long as public funds are utilized or is contemplated to be spent for any procurement activity, it shall, by force, fall within the ambit of the present procurement law. 

In this case, the foreclosure sale has to be advertised in compliance with the provisions of the Mortgage Law. It is our considered view that at the time of the advertisement of the foreclosure sale, BSP will have to shoulder the cost for the advertisement. Thus, regardless of the arrangement as to who ultimately bears the cost of advertisement when the foreclosure sale is completed, per requirement of the Mortgage Law, BSP is mandated to advertise the foreclosure sale; and in the process use its own funds to pay for the advertisement cost, as the foreclosure sale cannot commence without the opportunity being first published or advertised. For this reason, the procurement law and its associated rules shall apply in the procurement of the advertising services.

As regards the procurement modality, BSP may submit the advertisement opportunity to competitive bidding as the primary mode of procurement under Section 10 of RA 9184, and its 2016 IRR; or, adopt the appropriate alternative modalities of procurement, e.g., Negotiated Procurement under the *Small Value Procurement* modality sanctioned by Section 53.9 of the 2016 IRR, or Negotiated Procurement under the *Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services* modality embodied under Section 53.6 of the 2016 IRR of RA 9184.

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

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