NPM No. 087-2016

15 November 2016

P/SUPT. III MARIO E. TRANSMONTE
Chairperson, Bids and Awards Committee (BAC)
BUREAU OF CORRECTIONS (BUCOR)
DEPARTMENT OF JUSTICE (DOJ)
Muntinlupa City

Re: Procurement of Catering Services

Dear P/Supt. Transmonte:

This refers to your letter requesting for clarification on whether the procurement of catering services for the food subsistence of inmates is a procurement of expendable or non-expendable goods.

It is represented that the BuCor BAC identified its procurement to be within the category of **"expendable goods"** as defined in Section 5(m) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. For this reason, it required the bidders to submit a statement of its single largest completed contract (SLCC) which must be equivalent to at least twenty-five percent (25%) of the Approved Budget for the Contract (ABC). However, you were able to secure a copy of the memorandum of the former DOJ Undersecretary (Usec.) Francisco F. Baraan III to the Officer-In-Charge of BuCor thru the former BAC Chairman, where the Honorable Undersecretary has considered a similar declaration of the former NBP-BAC as "misplaced" and considered catering services for the food supplies of inmates as procurement of **non-expendable goods**. Hence, this request.

At the outset, please be guided of the difference between expendable and non-expendable supplies or goods as defined under the revised IRR of RA 9184 and reiterated in our earlier opinion[1]:

> Section 5 of the IRR of RA 9184 is clear. Expendable and non-expendable goods are particularly and clearly defined, such that, expendable goods refer to articles which are normally consumed in use within one (1) year or converted in the process of manufacture or construction, or those having a life expectancy of more than one (1) year but which shall have decreased substantially in value after being put to use for only one (1) year (*e.g.*, medicines, stationery, fuel, and spare parts). On the other hand, non-expendable supplies are defined as articles which are not consumed in use and ordinarily retain their original identity during the period of use, whose serviceable life is more than one (1) year and

[1] NPM No. 038-2014, dated 09 October 2014.

Nevertheless, in this particular case, we are of the opinion that the procurement of catering services does not fall as neither an expendable nor a non-expendable goods, but as a non-personal or contractual service. As mentioned in your letter and Usec. Baraan's memorandum, BuCor has no participation whatsoever with the bidder's purchase of raw materials, food preparation, hiring of personnel, etc. and all non-expendable and semi-expendable supplies remain the property of the caterer and does not add up to the assets of the BuCor. Apparently, tangible goods, whether expendable or non-expendable, are not the subject of procurement in this case, but the services of the caterer which include the provision of meals.

Consequently, procurement of *Services* shall require an SLCC of at least fifty percent (50%) of the ABC as provided in Clause 5.4 of the Bid Data Sheet[2] in this wise:

> *For the procurement of Non-expendable Supplies and Services:* The Bidder must have completed, within the period specified in the Invitation to Bid and ITB Clause 12.1(a)(iiii), a single contract that is similar to this Project, equivalent to at least fifty percent (50%) of the ABC.

In view of the foregoing, alongside definitive crucibles under the procurement law and rules, BuCor should be guided by the classification of the Goods to be procured as either expendable or non-expendable, or non-personal, contractual, and related and analogous services in the determination of the appropriate SLCC.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO
Executive Director V

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[2] Philippine Bidding Documents for the Procurement of Goods, 4th Edition, December 2010.