

NPM No. 102-2016

15 November 2016

MS. NIMFA E. POTANTE

Director IV, Procurement Service

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)

DPWH Compound, Bonifacio Drive,

Port Area, Manila

Re: Delegation of Authority

Dear Director Potante:

This refers to your electronic mail (e-mail) inquiring about which procurement documents subject to the approval by the Head of the Procuring Entity (HOPE) can be delegated.

We wish to inform you that Republic Act (RA) No. 9184 and its 2016 Revised Implementing Rules and Regulations provide specific instances where the HOPE can delegate its approving authority, thus:

1. Section 7.2 of the 2016 IRR of RA 9184:

“No procurement shall be undertaken unless it is in accordance with the approved APP, including approved changes thereto. The APP must be consistent with the duly approved yearly budget of the Procuring Entity and shall **bear the approval of the HOPE or second-ranking official designated by the HOPE to act on his behalf.**”

2. Section 37 of RA 9184

“Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity **or his duly authorized representative shall approve or disapprove the said recommendation.** In case of approval, the Head of the Procuring Entity **or his duly authorized representative shall immediately issue the Notice of Award** to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

x x x.”

3. Section 48 of RA 9184

“Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

x x x.”

4. Section 69 of RA 9184

“In addition to the provisions of Articles XXI and XXII of this Act, **the Head of the Procuring Entity, subject to the authority delegated to the BAC, if any, shall impose on bidders or prospective bidders, the administrative penalty** of suspension for one (1) year for the first offense, and suspension of two (2) years for the second offense from participating in the public bidding process, for the following violations:

x x x.” (Emphasis supplied)

Apart from these specific grant of authority to delegate particular functions of the HOPE, Section 5(j) of RA 9184¹ recognizes the authority of the Head of the Agency to delegate, in general, the functions of a HOPE. Accordingly, a duly authorized representative of the Head of the Agency can also perform the functions of the latter as the HOPE. It must be ensured however, that prior to performing the functions of the HOPE, the subject representative must be properly clothed with legal authority to do so based on existing laws, rules and regulations.

For National Government Agencies like the DPWH, delegation of authority is sanctioned under Executive Order (EO) No. 292 or the *Administrative Code of 1987*. Section 7(8), Chapter 2, Book IV thereof, states that one of the functions of a Department Secretary is to “[d]elegate authority to officers and employees under the **Secretary’s direction** in accordance with this Code.” Accordingly, the rule on delegation of authority is found in Section 40, Chapter 8 of the same Book, thus:

“The Secretary or the head of an agency shall have authority over and responsibility for its operation. He shall **delegate such authority** to the bureau and regional directors as may be **necessary for them to implement plans and programs adequately. Delegated authority shall be to the extent necessary for economical, efficient and effective implementation of national and local programs** in accordance with policies and standards

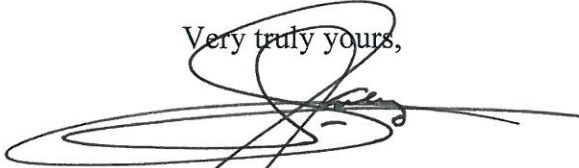
¹ Head of the Procuring Entity – refers to: (i) the **head of the agency or his duly authorized official**, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or -controlled corporations; or (iii) the local chief executive, for local government units. Provided, That in a department, office or agency where the procurement is decentralized, **the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency.** (Emphasis supplied)


developed by each department or agency with the participation of the regional directors. The delegation shall be in writing; shall indicate to which officer or class of officers or employees the delegation is made; and shall vest sufficient authority to enable the delegate to discharge his assigned responsibility.”
(Emphasis supplied)

In this regard, the Head of the Agency, as the designated HOPE, may delegate its functions such as the approval of the following documents: (1) Annual Procurement Plan (APP), (2) recommendation to award a contract and Notice of Award, (3) recommendation to resort to alternative methods of procurement and (4) recommendation for the imposition of administrative sanctions, among others, in accordance with RA 9184 and its associated 2016 revised IRR, or any other function as it may deem necessary in accordance with EO 292. The decision, however, to delegate such functions solely depend on the sound discretion of the Head of the Agency taking into consideration the aspects of economy, efficiency and accountability, and the need to effectively implement plans and programs of the Department.

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 

\\rd3