



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 01-2015

5 February 2015

HON. MARILOU B. ANCHETA-MEJICA

Assistant Ombudsman and Chairperson

Bids and Awards Committee

OFFICE OF THE OMBUDSMAN

Agham Road, Government Center,

North Triangle, Diliman, Quezon City 1128

Re: Procurement of Motor Vehicle Fuel and Maintenance Services

Dear Asst. Ombudsman Ancheta-Mejica:

This refers to the letter of the Honorable Assistant Ombudsman requesting for opinion relative to the procurement of motor vehicle fuel and maintenance services.

It is represented that an initial evaluation and study on the said procurement project had been conducted by the Office of the Ombudsman. As stated in the letter, your Office is considering Direct Contracting as the most feasible mode of procurement for the desired services, which will be implemented through a Memorandum of Agreement with a specific gasoline station or fuel provider. It is in this light that you are seeking clarification on the following matters:

1. Whether the Office of the Ombudsman may resort to Direct Contracting in the procurement of motor vehicle fuel and maintenance services; and
2. What is the most reasonable and possible mode of procurement for the mentioned services.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. It has no authority to determine the specific procurement method to be adopted by Procuring Entity (PE) in the conduct of its procurement activity, which authority is specifically granted to the PE by Republic Act (RA) No. 9184. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HOPE) and the Bids and Awards Committee (BAC), since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

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We wish to clarify that Direct Contracting or Single Source Procurement, as an alternative method of procurement, can be resorted to by the PE only upon determination of the existence of any conditions set forth in Section 50 of RA 9184 and its revised Implementing Rules and Regulations (IRR), in addition to the general conditions set forth under Section 48.1 of the revised IRR of RA 9184, thus:

1. Procurement of goods of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets, and copyrights prohibited others from manufacturing the same item;
2. When the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or
3. Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the GOP.

In Single Source procurement, the paramount consideration before the PE can resort to Direct Contracting is the singularity of supplier or manufacturer that can deliver the requirement of the PE either because of the proprietary nature of the goods, the existence of a condition in the contract, or the exclusivity of dealer or manufacturer. Specific for the first and third conditions, we have the occasion to clarify the basic requirement of Direct Contracting in our previous opinion¹, thus:

“[F]or the first and third conditions under Section 50 of the IRR to apply, it is incumbent upon the PE to ensure that ***based on the technical specifications of the goods subject of procurement, only one supplier, distributor or manufacturer can supply and deliver the goods.*** The PE, through the End-User, and the BAC should conduct a survey of the industry and determine the supply source to confirm the exclusivity of the source of goods to be procured. Moreover, the PE must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.”

Based on the foregoing, the procurement of motor vehicle fuel and maintenance services can be conducted through Direct Contracting only if the PE, after conducting a diligent market survey, can establish the singularity of the supplier or manufacturer of such goods and services required by the PE. A negative finding on the singularity of the source of the goods and services sought to be procured shall be a caveat to PE from resorting to Direct Contracting. Given the recognizable fact that there are various suppliers of motor vehicle fuel and maintenance services existing in the market, procurement of these goods and services may find no legal support from the basic requirement of Direct Contracting or Single Source Procurement.

Anent the second query, we wish to reiterate that it is the PE that has the sole authority and is in the best position to determine the appropriate method of procurement for a specific project based on the identified needs and requirements of the PE and the attendant

¹ NPM No. 110-2014 dated 6 November 2014 citing NPM No. 17-2007 dated 17 July 2007.

circumstances. It bears stressing, however, that Section 10 of RA 9184 and its IRR mandates that all procurement shall be done through Competitive Bidding, except when resort to alternative methods of procurement is warranted by attending circumstances. More importantly, these alternative methods of procurement shall be resorted to only in highly exceptional cases provided in Sections 49 to 53 of RA 9184 and its IRR. In the absence of these exceptional cases, procurement shall be done through Competitive Bidding.

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

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