



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 05-2012**

4 January 2011

**MS. FLORITA A. PONTILLAS, Ed.D.**

*Campus Director*

**PHILIPPINE SCIENCE HIGH SCHOOL –**

**CENTRAL VISAYAS CAMPUS (PSHS-CVC)**

**DEPARTMENT OF SCIENCE AND TECHNOLOGY**

Talaytay, Argao, Cebu

**Re: Request for Exemption from Resort to  
Negotiated Procurement (Take-Over of Contracts)**

Dear Dr. Pontillas:

We refer to your letter requesting for exemption from resorting to Negotiated Procurement (Take-Over of Contracts) under Section 53.3 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 after the contract for the design and construction of water system with the winning bidder was terminated.

Based on your letter, after the termination of contract with Domarax Construction and Development, the PSHS-CVC Bids and Awards Committee (BAC) recommended awarding the contract to Physics Research Services, as the bidder with the next lowest calculated bid, through Negotiated Procurement (Take-Over of Contracts). However, the Office of Assistant Secretary for Finance, Administration and Legal Affairs (FALA) of Department of Science and Technology (DOST) recommended that the project be re-bid instead of resorting to the aforementioned alternative method of procurement.

At the outset, we wish to clarify that Government Procurement Policy Board (GPPB) does not have the authority to grant exemption from the application of RA 9184 and its IRR. Its mandate is to effectuate the purpose and intent of the procurement law through its quasi-legislative fiat and render contemporaneous interpretation and construction of the rules and regulations issued pursuant to such function.

We wish to emphasize that the default method of procurement under RA 9184 and its IRR is competitive or public bidding as provided in Section 10 thereof. Alternative methods are, allowed in highly exceptional cases provided under Sections 48 to 53 of the same law and rules, and only upon determination by the head of procuring entity that the conditions therefor exist.

It should be clarified, however, that resort to any of the alternative methods of procurement is only an option available to the head of procuring entity after a careful study of

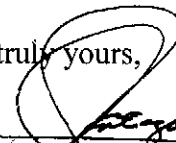

the conditions under the rules and the circumstances surrounding the procurement activity, such determination of the existence of the conditions allowing the use of any alternative procurement modality does not compel the procuring entity to use the same.

Since the general rule is public bidding, the procuring entity is not precluded from applying such method regardless of the existence of conditions warranting the use of any of the alternative methods of procurement. However, the decision to resort to any alternative method of procurement is a matter that rests upon the sound decision of the head of procuring entity, for which decision she may be lauded or held accountable and responsible.

In view of the foregoing, we are of the opinion that the recommendation of the Honorable Assistant for FALA of the DOST to re-bid the contract for the design and construction of water system for PSHS-CVC may be complied with without need for prior approval from this office or the GPPB.

We hope our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III* 

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