



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

NPM No. 09-2013

12 February 2013

MR. JUARLITO V. GARCINES, PAE, Ph.D.
President
**AGUSAN DEL SUR STATE COLLEGE OF
AGRICULTURE AND TECHNOLOGY (ASSCAT)**
8506 Bunawan, Agusan del Sur

Re: Hiring of a Private Lawyer

Dear Dr. Garcines:

We respond to your letter dated 11 January 2013, seeking guidance on the necessary steps that should be undertaken by ASSCAT in order to retain the services of a private counsel after having failed to receive any quotations despite posting twice at the Philippine Government Electronic Procurement System (PhilGEPS) website. This request is borne by the two (2) consecutive failures of competitive bidding activities for the procurement by ASSCAT of services of a legal counsel.

At the outset, we reiterate the statement in our letter dated 7 June 2012 that Section 10 of Republic Act (RA) 9184 and the revised Implementing Rules and Regulations (IRR) lays down the general rule that all procurement activities to be undertaken by government agencies, which include State Universities and Colleges, should be through competitive bidding. Nonetheless, resort to alternative modes of procurement may be conducted in highly exceptional cases, subject to prior approval of the Head of the Procuring Entity (HOPE) and when justified by the conditions provided in the procurement laws.¹

Taking into consideration the circumstances presented in your letter *vis-à-vis* the conditions for resorting to alternative methods of procurement provided in Rule XVI of the IRR of RA 9184, ASSCAT may carefully consider the applicability of alternative methods of procurement to its acquisition, such as, Limited Source Bidding under Section 49, Negotiated Procurement (Two Failed Biddings) under Section 53.1, Negotiated Procurement (Highly Technical Consultants) under Section 53.7, or Negotiated Procurement (Small Value Procurement) under Section 53.9 of the same IRR. It must be emphasized, however, that ASSCAT should sufficiently identify the existence and validity of the conditions or circumstances that warrant the use of the selected alternative procurement modality. In addition, the procuring entity has the discretion to resort to any of the alternative methods of

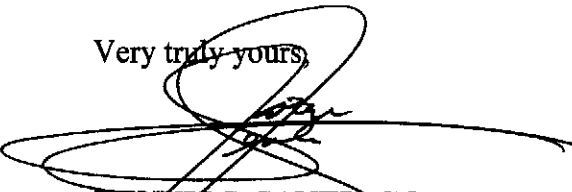
¹ Sections 48.1 and 48.2 of the IRR of RA 9184.

procurement, subject to compliance with the parameters and factors laid out in RA 9184 and its associated IRR.

Lastly, please be advised that although, generally, prior approval of the Government Procurement Policy Board (GPPB) is not necessary before a procuring entity resorts to any alternative method of procurement, for procurement activities involving an Approved Budget for the Contract amounting to at least Five Hundred Million Pesos, prior GPPB approval is required pursuant to Executive Order (EO) 423, Series of 2005, as amended by EO 645, Series of 2007.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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