



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

NPM No. 15-2014

5 May 2014

HON. EMMELINE L. VERZOSA
Executive Director
PHILIPPINE COMMISSION ON WOMEN
1145 J.P. Laurel St., San Miguel, Manila

Re: Contract of Service / Job Order

Dear Executive Director Verzosa:

This refers to the letter of the Honorable Executive Director dated 26 March 2014, seeking clarification on the applicability of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) in the engagement of Contract of Service Personnel on Job Order Basis.

We respectfully refer to Policy Matter (PM) Opinion No. 02-2012¹ issued by the Government Procurement Policy Board (GPPB), which discussed the non-applicability of RA 9184 and its IRR to the engagement of personnel under Job Order and Contract of Service, thus:

[I]t is necessary to distinguish the rendition of service that pertains to the performance of non-personal services from those that involve the accomplishment of personal services in order to determine the applicability of RA 9184 and its IRR.

As can be gleaned from the definition and enumeration of what involves General Support Services and analogous services, engagement of personal services under a Job Order or Contract of Service scenario is not contemplated under the procurement law and its associated rules. If at all, the rules on the procurement of General Support Services under RA 9184 and its IRR applies to the engagement of an individual or a company that will provide non-personal service, and not those in the nature of a personal service.

The GPPB, in PM Opinion No. 02-2012, further distinguished the selection and engagement of services of individual personnel under Job Order or Contract of Service from the procurement of Consulting Services, to wit:

It is worthy to stress that the consultants being referred to by the provision of RA 9184 and its IRR involve services which require adequate external capability and expertise that are not present in the hiring or individual

¹ Dated 21 November 2012.

personnel under job order or contract of service. Thus, the determining factor will depend on the particular or specific service/s that the procuring entity concerned needs.

Accordingly, if the desired service would require adequate external technical and professional capability and expertise that are beyond the existing capacity of the procuring entity, then the rules and regulations on the procurement of consulting services under RA 9184 and its IRR shall be applicable. Conversely, RA 9184 and its IRR will not apply in the hiring of individual personnel under Job Order or Contract of Service because the engagement does not require that level of expertise as primary consideration for its selection, but merely pertains to the engagement of ordinary piece of work or intermittent job of short duration.

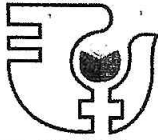
In view of foregoing, it is our opinion that RA 9184 and its associated IRR do not apply in the engagement of services of individuals under Job Order or Contract of Service. However, RA 9184 and its IRR find applicability in the engagement of non-personal service through sole proprietorship, partnership or a corporation contracted for the purpose.

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,

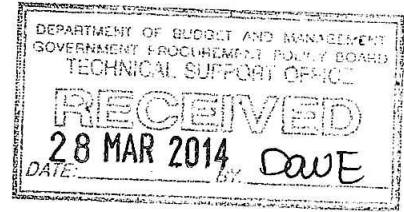

DENNIS S. SANTIAGO
Executive Director V

//oed



OFFICE OF THE PRESIDENT
PHILIPPINE COMMISSION ON WOMEN
"Philippine Machinery for the Advancement of Women"

26 March 2014



ATTY. DENNIS S. SANTIAGO

Executive Director V
Government Procurement Policy Board – Technical Support Office
Unit 2506 Raffles Corporate Center
F. Ortigas Jr, Ortigas Center, Pasig City

Dear Atty. Santiago:

Happy Women's Month!

*Riza/Koren,
The engagement of the COS
personnel in under the regular
recruitment process of the agency.
pls. prepare OPINION. Rex, OSS*

We would like to make an inquiry regarding the applicability of Republic Act 9184, otherwise known as the Government Procurement Reform Act, to the procurement of Contract of Service (COS) Personnel on Job Order basis.

In the exigency of service and due to the limited number of employees and taking into account the work necessary to carry out the functions, the PCW hires COS personnel as additional workforce to meet the demands and bulk of its workload.

In this regard, we would like to know if Job order applicants are covered under the procurement process (i.e. posting if the contract (salary / professional fee) would cost more than P50,000, open competitive bidding if it would cost more than P 500,000, at least three expressions of interest if thru shopping, etc.) as a prerequisite or part of the process in hiring COS-Job Order basis and for every renewal of contracts thereafter. We are of the view that Job order applicants can be processed by the Recruitment and Selection Board under the rules of the CSC for this concern.

We would appreciate receiving your advice on this matter. Our HRMD Officer, Ms. Ethel E. Caasi will contact you for further clarifications or please feel free to call her at 735-1654 loc. 113.

Thank you for your prompt action.

Very truly yours,


EMMELINE L. VERZOSA
Executive Director



Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

PM No. 02-2012

21 November 2012

MR. ACHILLES GERARD C. BRAVO
Regional Director
DEPARTMENT OF BUDGET AND MANAGEMENT
REGIONAL OFFICE XI
Km. 3 McArthur Highway, Matina, Davao City

Received:
[Signature]

Re: Job Order and Contract of Service

Dear Director Bravo:

This pertains to your Memorandum¹ relative to the request of Hon. Basilio A. Libayao, Mayor of Municipality of Talaingod, Davao del Norte, seeking clarification whether the hiring of individual personnel under Job Order and Contract of Service, considering its nature and contractual arrangements, is covered by Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR).

To put the discussion in proper context, please note that the Civil Service Commission (CSC) considers Job Order and Contract of Service as contract which involves piece of work or intermittent job of short duration not exceeding six (6) months or lump-sum work or services, such as janitorial, security or consultancy, where no employer-employee relationship exists, and is not covered by CSC law, rules and regulations.²

In line with its stand that no employer-employee relationship exists in a Job Order and Contract of Service arrangement, the CSC has discontinued requiring the submission of contracts undertaken through job order and contract of services to the Regional Offices and to the Commission.³ The CSC also adopts the view that since Job Orders and Contracts of Service is in the nature of contracts, the same should be under the supervision of and regulation by the Department of Budget and Management and the Commission on Audit (COA).

However, upon careful study and thorough verification of existing auditing rules and regulations, it appears that the appropriate issuances by COA merely provide for the documentary requirements and the corresponding procedures

¹ Reference No. XI- 2012010103.

² Memorandum Circular No. 01 s. 2007 (CSC Resolution No. 06-2254).

³ CSC Memorandum Circular No. 40 s. 1998 as amended by CSC MC NO. 15 s. 1999.

necessary for auditing purposes which must be submitted by the procuring entity once personnel under job order and contract of service have been engaged.⁴

In this regard, we deem it proper to clarify the following matters:

1. Applicability of RA 9184 and its revised IRR in the engagement of individuals under Job Order or Contract of Service;
2. Distinction between Job Order or Contract of Service involving non-personal and personal services; and
3. Distinction between the selection and engagement of services of individual personnel under Job Order or Contract of Service and the procurement of Consulting Services.

Applicability of RA 9184 and its revised IRR

RA 9184 and its IRR apply to the procurement of goods, infrastructure projects, and consulting services, regardless of source of funds. Section 5(r) of the IRR of RA 9184 expressly defines goods to include General Support Services, which involves "non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services." The term "related" or "analogous services" includes, but is not limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. Thus, it is necessary to distinguish the rendition of service that pertains to the performance of non-personal services from those that involve the accomplishment of personal services in order to determine the applicability of RA 9184 and its IRR.

As can be gleaned from the definition and the enumeration of what involves General Support Services and analogous services, engagement of personal services under a Job Order or Contract of Service scenario is not contemplated under the procurement law and its associated rules. If at all, the rules on the procurement of General Support Services under RA 9184 and its IRR applies to the engagement of an individual or a company that will provide non-personal service, and not those in the nature of a personal service.

Distinction between Job Order or Contract of Service involving non-personal and personal services

Since a Job Order or Contract of Service may pertain to either a non-personal or a personal service, the nature of the service covered by such engagement is vital in determining the applicable rules. The governing crucibles are not determined based solely on the fact that the engagement was through the execution of a Job Order or Contract of Service, but through a circumspect analysis of the obligations of the individual and the manner they are to be performed.

In the case of engagement of individuals to perform services under a Job Order or Contract of Service, where the selection and evaluation process considers the

⁴ COA Circular No. 2012-001 dated 14 June 2012.

individual's qualifications for the purpose of performing personal services, *i.e.*, where the individual carries out work on a regular or routinary basis that is necessary, desirable, and essential to the conduct of business of the agency concerned; or those being performed by a regular personnel of the agency, the ensuing arrangement partakes the nature of hiring personnel rather than procurement of services. In this situation, the performance of work that is necessary, desirable, and essential to the agency falls within the effective control, management and supervision of the procuring entity, that goes back to: 1) the selection process; 2) the identification of the parameters and rules for the engagement; 3) the agreement on the payment of compensation or wages; and, 4) the establishment of rules and regulations for recognition, promotion or dismissal.

In *Alexander Lopez, et.al. v. Metropolitan Waterworks and Sewerage System*⁵, the issue was whether the collectors-contractors were employees of Metropolitan Waterworks and Sewerage System (MWSS), or whether they were merely engaged under a contract of service. The Supreme Court (SC), in determining that an employer-employee relationship exists between the collectors-contractors and MWSS, applied the four-fold test, namely: (1) whether the alleged employer has the power of selection and engagement of an employee; (2) whether he has control of the employee with respect to the means and methods by which work is to be accomplished; (3) whether he has the power to dismiss; and (4) whether the employee was paid wages. The SC held that despite the obvious attempt of MWSS to categorize the collectors-contractors as mere service providers, and not employees, by entering into contracts for services, its actuations show that they are its employees, pure and simple.

Moreover, in the *Alexander* case, the CSC avers that contractual employees are those with contractual appointment submitted to and attested by the CSC, a situation absent in the case of the collectors-contractors who failed to show that their appointments were duly attested by the CSC. However, although the SC recognizes the authority of the CSC in promulgating circulars and memoranda concerning the civil service sector in line with its function as the central personnel agency of the government, the High Tribunal cannot turn a blind eye to CSC's rather haphazard application and interpretation of its own issuance. Further, the task of collecting payments for water supplied by the MWSS to its consumers does not deserve to be compared with mere janitorial, security or even consultancy work. Accordingly, the High Court determined that there is employer-employee relationship between MWSS and its collectors due to the nature of their engagement, as opposed to a situation where a procuring entity engages the services of a firm and not the individuals comprising such company.

Further, in CSC Resolution No. 030102⁷, the CSC recognized that the element of control and supervision is the foremost consideration taken in determining whether a service is rendered by an employee, and declared that apparent contractual stipulations supporting such control and supervision cannot be debunked by the express declaration in the contract that "there exists no employer-employee relationship".

⁵ G.R. No. 154471, June 30, 2005.

⁷ Dated 22 January 2003.

On the other hand, if the engagement of individuals or a firm is for the purpose of providing non-personal services, *i.e.*, those which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project, or activity, there exists no employer-employee relationship between the procuring entity and the individual workers. If at all, the employer-employee linkage is with the contracting firm and the individual workers, because the power of selection, power of control, power to dismiss, and payment of wages rest in the hands of the firm or company with whom the procuring entity contracted with. Under this situation RA 9184 and its IRR apply in the procurement of the non-personal services provided by the firm or company.

Distinction between the selection and engagement of services of individual under Job Order/Contract of Service and the procurement of Consulting Services

The engagement of the services of individual personnel under Job Order and Contract of Service should not be confused with the procurement of Consulting Services.

For guidance, Consulting Services refer to services requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the procuring entity to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies⁸.

It is worthy to stress that the consultants being referred to by the provision of RA 9184 and its IRR involve services which require adequate external capability and expertise that are not present in the hiring of individual personnel under job order or contract of service. Thus, the determining factor will depend on the particular or specific service/s that the procuring entity concerned needs.

Accordingly, if the desired service would require adequate external technical and professional capability and expertise that are beyond the existing capacity of the procuring entity, then the rules and regulations on the procurement of consulting services under RA 9184 and its IRR shall be applicable. Conversely, RA 9184 and its IRR will not apply in the hiring of individual personnel under Job Order or Contract of Service because the engagement does not require that level of expertise as primary consideration for its selection, but merely pertains to the engagement of ordinary piece of work or intermittent job of short duration.

Again, in CSC Resolution No. 030102, the CSC did not consider the "task to perform contract preparation and review, to facilitate and coordinate between the Office of the Vice President – Contract Management and Services Group and other NAPOCOR offices *vis-à-vis* agencies of the government on the matter" – responsibilities that are necessary as duties that may be classified as lump sum work or consultancy service.

⁸ Section 5 (i) of the IRR of RA 9184.

Summary

All told, it is our considered opinion that RA 9184 and its associated IRR do not apply in the engagement of services of individuals under Job Order or Contract of Service. Neither will RA 9184 and its IRR apply when the services do not require adequate external technical and professional capability and expertise that are beyond the existing capacity of the procuring entity. However, RA 9184 and its IRR will apply in case an individual is engaged to perform non-personal service or, when a firm is contracted for the same purpose, in which case, the employer-employee relationship exists between the firm or company and its individual workers, and not with the procuring entity.

We trust that the foregoing provides sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

~~_____~~
FLORENCIO B. ABAD
Chairperson