

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

**NPM No. 16-2012**

26 January 2012

**MR. FRANCISCO F. DEL ROSARIO, JR.**  
*President and CEO*  
**DEVELOPMENT BANK OF THE PHILIPPINES**  
Sen. Gil Puyat Avenue corner Makati Avenue,  
Makati City

**Re: Agency-to-Agency Agreements**

Dear Mr. Del Rosario:

We refer to your letter dated 8 January 2012 requesting for legal opinion on whether an Agency-to-Agency arrangement under Section 53.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 is plausible for the Cashless Purchase Card project that will be implemented by the Department of Budget and Management (DBM) and the Department of National Defense – Armed Forces of the Philippines (DND-AFP).

As a general rule, pursuant to Section 10 of RA 9184 and its IRR, all procurement shall be done through competitive bidding. It is a common acceptance, both locally and internationally, that competitive bidding brings about the identification of the right source, quality, quantity, delivery and price of goods, works and services alongside value for money procurement. However, in order to promote efficiency and economy, resort to alternative modes of procurement may be done in highly exceptional cases and when justified by the conditions prescribed under Rule XVI of the IRR of RA 9184, subject to prior approval of the Head of the Procuring Entity (HOPE).

While it is a general policy of government to purchase its requirements from the private sector, it acknowledges that, in some exceptional cases, procurement from another agency of the government would be more efficient and economical for the government. Thus, the IRR of RA 9184 and the Implementing Guidelines on Agency-to-Agency Agreements<sup>1</sup> allow procuring entities to resort to Negotiated Procurement (Agency-to-Agency), subject to compliance with the following conditions:

1. Cost-benefit analysis has been conducted by the Procuring Entity;
2. The total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity's total procurement budget for each category;

<sup>1</sup> GPPB Resolution 018-2007 dated 31 May 2007, as amended by GPPB Resolution 03-2011 dated 28 January 2011

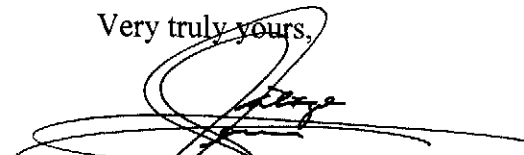
3. The Servicing Agency has the mandate to deliver the goods and services required to be procured; and
4. The Servicing Agency owns or has access to the necessary tools and equipment required for the project.<sup>2</sup>

We wish to stress, however, that procuring entities are mandated to procure by way of open, competitive and public bidding, and the use of any alternative procurement modality may be resorted to only in highly exceptional cases provided under the rules.<sup>3</sup> Moreover, decision to resort to any of the alternative methods of procurement such as Negotiated Procurement (Agency-to-Agency) resides with the Procuring Entity upon proper evaluation of the circumstances surrounding a particular procurement, and due determination of the existence of conditions warranting use of an alternative method of procurement.

From the foregoing, it is upon DBM's sole discretion whether the procurement for the Cashless Purchase Card project should be conducted through public bidding or through Negotiated Procurement (Agency-to-Agency). If DBM decides to resort to public bidding, no further justification is necessary considering that such is the default rule. However, if the decision is to resort to Negotiated Procurement (Agency-to-Agency), DBM has to satisfactorily show that the conditions for its use have been complied with.

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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<sup>2</sup> Part 5 of the Implementing Guidelines on Agency-to-Agency Agreements issued through GPPB Resolution No. 018-2007 dated 31 May 2007.

<sup>3</sup> See Section 48 of the IRR of RA 9184