



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

NPM No. 24-2014

17 June 2014

MR. ARNULFO H. DIVINA
3-E Law Street, Victoria Subdivision,
Sauyo, Quezon City

Re: Agency-to-Agency Agreements

Dear Mr. Divina:

This refers to your letter dated 11 June 2014, seeking our opinion on whether a surrendered or sequestered corporation of the Presidential Commission on Good Government (PCGG) where the government has controlling share could act as a Servicing Agency with another government agency for the procurement of goods, infrastructure projects, and consulting services under Negotiated Procurement (Agency-to-Agency Agreement).

Government Owned and/or Controlled Corporations

Under the Implementing Guidelines on Agency-to-Agency Agreements¹ (Guidelines), the term agency covers all Departments, Bureaus, Offices and Agencies of the National Government, Government-Owned and/or Controlled Corporations (GOCCs), Government Financing Institutions, State Universities and Colleges, and Local Government Units.

GOCC, as defined under Section 2(13) of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock. It is clear, therefore, that a corporation is considered a GOCC when the Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock.²

The legal definition of a GOCC and the three (3) requisites mentioned shall serve as guide in determining the nature of a surrendered or sequestered corporation, specifically if it is a GOCC or not.

In addition, with the creation of the Governance Commission for GOCCs (GCG) under Republic Act 10149 approved on 6 June 2011, there is now a central advisory,

¹ GPPB Resolution No. 18-2007 issued on 31 May 2007 as amended by GPPB Resolution No. 12-2013 dated 26 April 2013.

² Carandang vs. Office of the Ombudsman, G.R. Nos. 148076 and 153161, January 12, 2011.

monitoring, and oversight body for GOCCs, which may determine whether PCGG's surrendered or sequestered corporations may be considered as GOCCs or not.

Servicing Agency

Of important consideration is the determination and qualification of a Servicing Agency under the Agency-to-Agency negotiated procurement modality. Culled from the Guidelines, the Servicing Agency shall be treated as such when its mandate involves the delivery of goods and services, or to undertake the infrastructure project or consultancy required by the Procuring Entity. In addition, the Servicing Agency is expected to own or has access to the necessary tools and equipment required for the project.

Accordingly, apart from being regarded as GOCC under existing laws, as confirmed by the relevant government authority, it can be engaged under the Agency-to-Agency procurement modality if the surrendered or sequestered corporations have the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency³.

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 you have further questions, please do not hesitate to contact us.

Very truly yours,



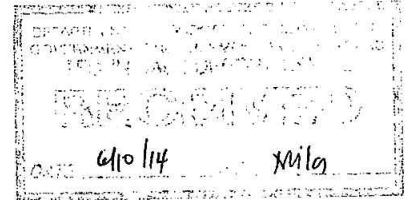
DENNIS S. SANTIAGO
Executive Director V

³ Section 5(iii), Implementing Guidelines on Agency-to-Agency Agreements, GPPB Resolution No. 18-2007, 31 May 2007

June 11, 2014

The **Government Policy Procurement Board**
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Attention: The Honorable **DENNIS S. SANTIAGO**
Executive Director III



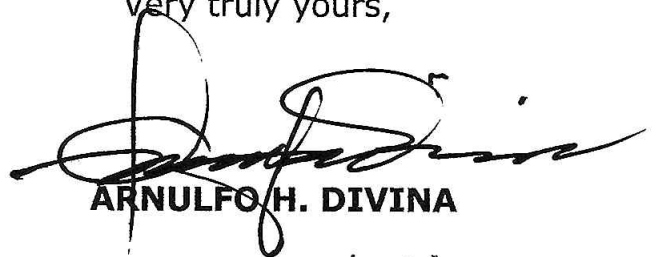
Gentlemen:

Greetings.

The undersigned respectfully requests for opinion whether the amendment to Section 53.5 of the revised Implementing Rules and Regulations of RA 9184 contained in GPPB Resolution No. 12-2013 qualifies a surrendered or sequestered corporation of the Presidential Commission on Good Government (PCGG) where the government has controlling share as a servicing agency in the Agency-to-Agency procurement?

Thank you for your usual prompt response.

Very truly yours,



ARNULFO H. DIVINA

Please send reply to:
Arnulfo H, Divina
3-E Law Street, Victoria Subdivision, Sauyo, Quezon City
Email Address: adivina0405@yahoo.com

R. S. Henry 6/16
please prepare opinion
7/10/14