



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

**NPM No. 25-2014**

17 June 2014

**ATTY. VINA T. ZAMORA**

*Legal Officer IV, ASD*

*Bids and Awards Committee-Technical Working Group (BAC-TWG)*

**COMMISSION ON ELECTIONS (COMELEC)**

Intramuros, Manila

**Re: Lease-to-Own Agreement of Motor Vehicles under Section 53.5 (Agency-to-Agency Agreements) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184**

Dear Atty. Zamora:

This refers to your letter dated 6 May 2014, seeking our opinion relative to the acquisition of service vehicles under a lease-to-own agreement through agency-to-agency procurement modality with a private corporation wholly-owned by a government-owned and controlled corporation (GOCC).

**Motor Vehicles, Lease-to-Own**

Section 46 of the IRR of RA 9184 states that lease of construction and office equipment, including computers, communication and information technology equipment, are subject to the same public bidding and to the processes prescribed under the Act and its IRR. Lease may also cover lease purchase or lease-to-own and similar variation.

As discussed in Non-Policy Matter Opinion No. 65-2007<sup>1</sup>, motor vehicles may be procured under lease-to-own agreements. While lease-to-own of motor vehicles is not contemplated under Section 46 of the IRR, which specifically relates to construction and office equipment, Section 5(r) of the IRR of RA 9184 expressly defines goods to include “related” or “analogous services”, such as lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. Undoubtedly, motor vehicles are essential in the operations of the procuring entity. In addition, a lease-to-own agreement is a variant of lease, which is covered by the term “procurement” as defined under Section 5(aa) of the IRR of RA 9184.

**Section 53.5 of the IRR of RA 9184 (Agency-to-Agency Agreements)**

In accordance with Section 10 of the IRR of RA 9184, as a general rule, the procuring entities shall adopt public bidding as the general mode of procurement<sup>2</sup>. Alternative methods,

<sup>1</sup> Dated 3 December 2007.

<sup>2</sup> Section 48.2 of the IRR of RA 9184.

such as the agency-to-agency negotiated modality, shall be resorted to only under highly exceptional cases as sanctioned by RA 9184 and its IRR.

In cases where procurement from another agency of the government is more efficient and economical, Negotiated Procurement under Section 53.5 (Agency-to-Agency Agreements) of the IRR of RA 9184 may be resorted to. This rule allows a government entity to procure from another government entity without need of public bidding, subject to compliance with the prescribed conditions and procedures under existing rules and Guidelines on Agency-to-Agency Agreements<sup>3</sup> (Guidelines), to wit:

1. Conduct of a Cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
2. 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 (i.e., goods, infrastructure, or consulting) as reflected in its approved APP;
3. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and
4. Servicing Agency owns or has access to the necessary tools and equipment required for the project<sup>4</sup>.

Accordingly, a private corporation wholly-owned by a GOCC, may be considered as a Servicing Agency under an Agency-to-Agency Agreement relative to the Lease-to-Own of Motor Vehicles, provided that the foregoing conditions set by the Guidelines have been complied with.

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*

*skp* 

<sup>3</sup> Issued through GPPB Resolution No. 18-2007 dated 31 May 2007.

<sup>4</sup> Section 5(a) of the Guidelines.