



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

NPM No. 30-2012

3 April 2012

HON. CELIA C. KING
Deputy Commissioner
RESOURCE MANAGEMENT GROUP
BUREAU OF INTERNAL REVENUE (BIR)
Quezon City

**Re : Resort to Negotiated Procurement
(Agency-to-Agency) and (Procurement
Agent)**

Dear Deputy Commissioner King:

We respond to your letter dated 24 February 2012, which we received on 2 March 2012, requesting for clarification regarding Negotiated Procurement under Sections 53.5 (Agency-to-Agency) and 53.6 (Procurement Agent) of the Implementing Rules and Regulations (IRR) of Republic Act 9184.

As represented, the BIR is planning to construct a Large Taxpayers Service (LTS) Building inside the National Office Compound in Diliman, Quezon City. The BIR intends to procure the services of the Philippine Reclamation Authority¹ (PRA) for the construction of said building. In addition, the services of PRA will also be tapped in relation to the conduct of bidding process, design and layout work, and the supervision of the actual construction of the building, among others.

At the outset, we wish to clarify that Agency-to-Agency procurement and procurement through a Procurement Agent refer to different instances of negotiated procurement under Section 53 of the IRR. As we have discussed in a previous opinion,² the decision to resort to any of the alternative methods of procurement resides with the procuring entity upon proper evaluation of the circumstances surrounding a particular procurement and after due determination of the existence of conditions warranting its use. Although both modalities of negotiated procurement may be used to engage another government agency, the service intended to be performed will be material in determining the appropriate negotiated modality to be adopted.

We note from your letter that the services BIR intends to have PRA perform are the following: (a) conduct of bidding; (b) design and layout; (c) construction; and (d)

¹ Formerly Public Estates Authority.

² NPM No. 16-2012 dated 26 January 2012.

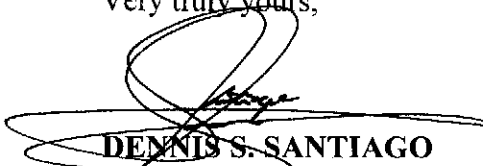
construction supervision. In line with this, following are the appropriate applications of Agency-to-Agency procurement, and procurement through a Procurement Agent, thus:

- 1) The engagement of PRA to conduct public bidding for BIR cannot be made through Agency-to-Agency since the purpose of such method is to have the servicing agency perform the actual service for the procuring entity, e.g., supply of goods, construction of infrastructure project, or performance of consulting service. The more appropriate method for such service, that is, engaging another agency to officiate and manage the bidding for another procuring entity, would be through a Procurement Agent;
- 2) However, if BIR engages PRA to conduct the bidding process for the design and layout, construction, or construction supervision, the latter neither can participate in such bidding activities because it is the Procurement Agent, nor can it be engaged by means of Agency-to-Agency for such services; or
- 3) On the other hand, if BIR engages PRA under the Agency-to-Agency scheme, to perform the design and layout, construction, and construction supervision for the project, there will be no need for bidding for such services even for a third party contractor considering that resort to Agency-to-Agency presumes that the servicing agent has the capability to perform the services. PRA may, however, be engaged as a Procurement Agent for a bidding for services other than those where it is engaged as the servicing agent.

Based on the foregoing, we wish to clarify that in entering into an agreement with another government agency, whether through an Agency-to-Agency arrangement or by way of a Procurement Agent, the services to be performed should be properly considered in line with the conditions for such use as mentioned above.

Our opinion is based on the information presented, and may not be applicable to a different set of facts and circumstances. We hope to have provided sufficient guidance on the matter. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III