



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

NPM No. 49-2014

13 October 2014

MS. TASHMA ASID-MAADIL
Senior Engineer A
PHILIPPINE PORTS AUTHORITY (PPA)
PORT MANAGEMENT OFFICE (PMO) ZAMBOANGA
RT Lim Boulevard, Zamboanga City

Re: Legal Documents for the Procurement of Individual Consultants

Dear Ms. Asid-Maadil:

This refers to your query sent thru electronic mail (e-mail), requesting our opinion, relative to the engagement of individual consultants, on whether it is sufficient to require the following instruments, as part of the legal eligibility documents:

1. Professional Regulation Commission (PRC) license and/or Professional Tax Return (PTR);
2. Mayor's Permit.

As a general rule, procurement shall be undertaken through public bidding pursuant to Section 10 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR). For the procurement of consulting services, the Quality Based Evaluation or Quality Cost Based Evaluation Process shall be employed. For purposes of determining the eligibility and short list of consultants, only the following Class "A" legal eligibility documents shall be required by the Bids and Awards Committee, in accordance with Section 24.1(a) of the IRR of RA 9184, thus:

- (i) Registration certificate from SEC, Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives, or any proof of such registration in the Bidding Documents;
- (ii) Mayor's permit issued by the city or municipality where the principal place of business of the prospective bidder is located.

As discussed in a previous opinion¹, procuring entities are proscribed from requiring additional eligibility requirements. The list of minimum legal, technical and financial eligibility has been streamlined/simplified, such that only those requirements enumerated in Section 24.1 of the IRR of RA 9184 are necessary for purposes of determining bidders' eligibility. The rationale afforded by the GPPB for this is to allow greater participation, enhance competition among prospective bidders, and reduce transaction costs.²

¹ NPM No. 10-2010, dated 14 April 2010.

² NPM No. 65-2009, dated 17 December 2009.

Although public bidding is the general mode of procurement, resort to Alternative Methods of Procurement may be conducted in highly exceptional cases, subject to the prior approval of the Head of the Procuring Entity (HOPE) and when justified by the conditions provided by RA 9184 and its IRR.

For instance, under Section 53.7 of the IRR of RA 9184, the procuring entity may undertake Negotiated Procurement in the engagement of highly technical consultants, thus:

Section 53.7 Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.

In negotiated procurement, the procuring entity directly negotiates a contract with a legally, technically and financially capable supplier, contractor or consultant³. In an earlier opinion⁴, we opined that the IRR of RA 9184 is silent whether or not the eligibility documents required in public bidding must be submitted when resorting to any of the Alternative Methods of Procurement. This being the case, the procuring entity has the discretion as to what eligibility documents it will require. Nevertheless, we wish to emphasize that the procuring entity shall ensure that it will be entering into a contract with a consultant that is legally, technically and financially capable to undertake the project.

In sum, it is the opinion of this office that:

1. In the engagement of consultants thru public bidding, the legal, including the technical and financial, eligibility documents to be required by the BAC are those prescribed under Section 24.1(a) of the IRR of RA 9184;
2. When resort to any of the alternative methods of procurement is warranted by the conditions set forth by the IRR of RA 9184, the procuring entity has the discretion as to what eligibility documents it will require, provided that it will be entering into a contract with a consultant that is legally, technically and financially capable to undertake the project.

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

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³ Section 53, IRR of RA 9184.

⁴ NPM No. 142-2012 dated 5 November 2012.