

NPM No. 05-2009

13 January 2009

MR. ACMAD RIZALDY P. MOTI
Senior Vice President
Information Technology Support Services Sector
PAG-IBIG FUND
The Atrium of Makati
Makati Avenue, Makati City

Re : Service Providers

Dear Mr. Moti:

This pertains to your letter dated 24 December 2008 seeking clarification on whether the contract between the Pag-IBIG Fund and Innove Communications, Inc. (Innove), the existing Service Provider (SP) for the Pag-IBIG Fund Wide Area Network (WAN) Infrastructure Project, may be renewed without public bidding. The proposed renewal is anchored on the following grounds:

- 1) There is a need to retain the services of Innove since any change in the SP will result to service interruptions among the branches of the Pag-IBIG Fund; and
- 2) Since WAN requires links similar to Internet Services and runs on the same network infrastructure provided by telecommunications companies such as Innove, then the *Guidelines on Procurement of Water, Electricity, Telecommunications and Internet Service Providers*¹ (hereafter referred to as the Guidelines), allowing the renewal of such contracts may likewise be applied.

Thus, the basic issue is whether WAN service may be considered as identical to or similar with internet service such that the Guidelines governing the latter may, by analogy, be used in its procurement.

¹ Issued through GPPB Resolution 011-2007, dated 31 May 2007, and published in the Official Gazette on 13 August 2007.

Public Bidding as the General Rule

Pursuant to the principles of transparency, competitiveness and accountability espoused by Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations – Part A (IRR-A) Section 10, Article IV thereof prescribes that all procurement shall be done through Competitive Bidding. Alternative methods shall be resorted to only in highly exceptional cases², provided that the prior approval of the HOPE or his duly authorized representative is obtained and, provided, further, that the conditions under Rule XVI of the Act are complied with.³

R.A. 9184 confers upon the procuring entity through the Bids and Awards Committee (BAC), the exclusive jurisdiction to determine the classification and nature of the procurement to be undertaken. Likewise, it bestows upon the BAC the prerogative to recommend to the Head of the Procuring Entity (HOPE) the use of the Alternative Methods of procurement, provided, that the conditions under R.A. 9184 are present and pertinent rules relative thereto are observed.⁴

WAN versus Internet Service

Under Title 1 - Scope and Application, the Guidelines shall govern the procurement of water, electricity, telecommunications (landline and cellular phone), and **internet service providers (ISPs)** by government agencies. There is no direct provision under the Guidelines, nor any references made in the deliberations⁵ conducted in relation thereto, allowing its application to WAN servicing.

Further, the Guidelines are silent on the definition of internet services, and merely describe ISPs as those providing the initial infrastructure requirements (e.g. cabling) necessary in the provision of internet access.

Thus, as the Guidelines are silent on the definition of internet services, and, inasmuch as this Office is without power and technical expertise to determine the similarities, distinctions and other factual considerations between the two, we shall defer to categorically rule on the applicability of the Guidelines to the procurement of WAN service providers.

In view thereof, we highly encourage the BAC to consult with the Commission on Information and Communications Technology (CICT), the National Computer Center (NCC), the National Telecommunications Commission (NTC) or other relevant government agencies for further guidance on the matter.

In any event, it is strongly recommended that the BAC proceed with the public bidding of the agency's WAN Infrastructure Project. Subject to existing guidelines on

²Section 48.2, IRR-A.

³Section 48.1, IRR-A.

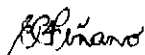
⁴Section 12.1, IRR-A.

⁵8th Inter-Agency Technical Working Group (IATWG) Meeting dated 15 November 2006, 5th Government Procurement Policy Board (GPPB) Meeting dated 06 December 2006, and the 9th IATWG Meeting held last 04 December 2006.

the matter, the BAC may consider extending the services of the current WAN service provider until the contract is awarded to the winning bidder. However, this is without prejudice to the responsibility of the procuring entity to conduct proper, timely and efficient procurement planning so as not to unduly interrupt necessary services and operations therein.

Anent all the foregoing, we trust this clarifies matters. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III



Ma'am Emmie,
For review po. Ty.
FN: Pag-IBIG. 12.24.2008

AL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

08 January 2009

MR. ACMAD RIZALDY P. MOTI
Senior Vice President
Information Technology Support Services Sector
PAG-IBIG FUND
The Atrium of Makati
Makati Avenue, Makati City
Re: Service Provider

Bryan,
Kindly print out the revised draft-
final, for my signature.
FN: PAG-IBIG. Service Provider.

cc: Atty. Ayco

fx
1/13/09

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This pertains to your letter dated 24 December 2008 seeking clarification on whether the contract between the Pag-IBIG Fund and Innove Communications, Inc. (Innove), the existing Service Provider (SP) for the Pag-IBIG Fund Wide Area Network (WAN) Infrastructure Project, may be renewed without public bidding. The proposed renewal is anchored on the following grounds:

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Thus, the basic issue is whether WAN service may be considered as identical to or similar with internet service such that the Guidelines governing the latter may, by analogy, be used in its procurement.

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WAN versus Internet Service

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Further
Thus, ~~as~~ the Guidelines are silent on the definition of internet services, and, ^{prescribes} inasmuch as this Office is without power and technical expertise to determine the similarities, distinctions and other factual considerations between the two, we shall defer to categorically rule on the applicability of the Guidelines in the procurement of WAN service providers.

define under next paragraph
merely discharges IRRs as those providing the internet service. NTC (app. cable) necessary for in the provision of internet service.
~~It is hereby left within the duty and responsibility of the BAC in determining whether or not deviation from the default mode of public bidding is justified, to define the resemblance between WAN and internet service. In view of this, we highly encourage for the BAC to consult with the Commission on Information and Communications Technology (CICT), the National Computer Center (NCC), the National Telecommunications Commission (NTC) or other relevant government agencies for further guidance on the matter.~~

X
In any event, should the Guidelines be pronounced to be irrelevant with regard to the procurement at hand, the BAC is not left without recourse and may opt to

²Section 48.2, IRR-A.

³Section 48.1, IRR-A.

⁴Section 12.1, IRR-A.

⁵8th Inter-Agency Technical Working Group (IATWG) Meeting dated 15 November 2006, 5th Government Procurement Policy Board (GPPB) Meeting dated 06 December 2006, and the 9th IATWG Meeting held last 04 December 2006.

~~procure using the alternative methods, such as Direct Contracting⁶, provided the requirements relative thereto are present.~~

Anent all the foregoing, we trust this clarifies matters. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

⁶ Section 50, Rule XVI, IRR-A.

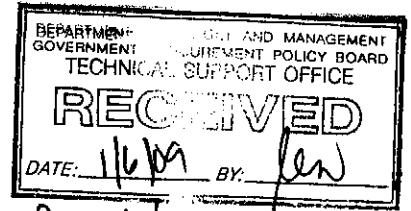


Pag-IBIG Fund

Examine, please handle. Sign in my behalf. PJ

*Atty. Nijce,
Pls. draft reply. Coordinate w/ Bryan.*

December 24, 2008 I think they can use the WATL Guidelines for the renewal of their WAN service Provider, provided they comply with conditions under Section 3.3 thereof.



MS. RUBY U. ALVAREZ For validation, they may also inquire with Executive Director III, GPPB - TSO NCC or CICT whether Innove meets the requirements/qualifications of an ISP.

for 1/17/09

Dear Madam:

TH. J. 1/2/09

Happy Holidays! Per instruction of Atty. Bryan Bigalbal of GPPB-TSO last November 18, 2008, we are formally writing you to seek clarification on the mode of procurement for our existing Wide Area Network (WAN) infrastructure in which contract has recently expired. As a brief backgrounder, the Pag-IBIG Fund WAN project was a three-year contract awarded to Innove Communications, Inc. (Innove) via public bidding. It covered the installation and maintenance of the communication lines connecting our 33 offices nationwide including the required network equipment. It serves as our facility for inter-branch transactions such as member records verification and consolidation, email and other business process operations.

In this regard, can we do straight renewal of the said contract to our existing Service Provider (SP) instead of a public bidding since changing SPs will entail service interruption amongst our branches? Can we also consider as basis, "Item No. 3.3 - Internet Service Providers (ISP) Appendix M of the Guidelines on Procurement of Water Electricity, Telecommunications and Internet Service Providers from the Handbook on Philippine Government Procurement 4th Edition" since WAN links like Internet Services runs on the same network infrastructure provided by telecommunications company such as Innove? They are also implemented almost the same way considering the initial infrastructure requirements.

We believe that renewing the services of our WAN Provider would prove to be more beneficial to our organization in terms of cost and quality of service to our members.

We are hoping for your favorable response on this matter.

Very truly yours,

[Signature]
ACMAD RIZALDY P. MOTI

Senior Vice President
Information Technology Support Services Sector