



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

NPM No. 58-2012

14 May 2012

HON. DOMINGO RAMON C. ENERIO III
Assistant Secretary, Tourism Planning and Promotion
Officer-in-Charge, Tourism Promotions Board
PHILIPPINE TOURISM PROMOTIONS BOARD (PTPB)
Department of Tourism Building,
T.M. Kalaw Street, Rizal Park,
Manila

Re: Direct Contracting (Country Brand Campaign)

Dear Assistant Secretary Enerio:

This is in response to your letter dated 18 April 2012 seeking our opinion on the procurement of the services of a firm to conceptualize, develop, and produce the necessary materials for the country brand campaign of the Department of Tourism (DOT), in accordance with Section 50 of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

It is represented that the Philippine Tourism Promotions Board (PTPB), being the agency mandated under Republic Act (RA) No. 9593 to be the implementing arm of the DOT with respect to the latter's marketing and communications campaign, intends to procure the afore-mentioned services. It is further represented that the development of the country brand campaign concept was contracted by the DOT to BBDO Guerrero (BBDO). Since BBDO has already conceptualized and developed the country brand campaign, which involved the adoption of trade secrets that are propriety in nature, PTPB would like to further engage the services of the former to produce and develop the necessary campaign materials to ensure that the momentum established will not be delayed and they are in sync with the brand campaign concept. It is in this context that you are seeking our guidance on whether PTPB could resort to Direct Contracting as an alternative method of procurement under Section 50 of RA 9184 and its IRR.

Under RA 9184, the procuring entity shall adopt public bidding as the general mode of procurement. Alternative methods of procurement are resorted to only in highly exceptional cases set forth in Sections 48-54 of RA 9184 and its IRR.¹ In all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained.²

Thus, please be advised that this office has always maintained that the determination and accountability for the use of any of the alternative methods of procurement rest primarily

¹ Section 10 of R.A. 9184 and its IRR; Section 48.2 of the IRR of R.A. 9184.

² Section 48.1 of the IRR of R.A. 9184.

with the procuring entity, considering that it is in the best position to determine the existence of conditions required for an alternative method of procurement.

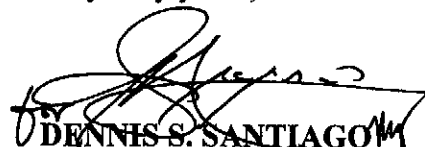
For your guidance, please note that Direct Contracting as an alternative method of procurement under Section 50 of RA 9184 applies only to procurement of goods. "Goods", as defined under Section 5 of the IRR refers to all items, supplies, materials, and general support services, except consulting services. "Consulting Services", on the other hand, refer to services for activities requiring adequate external technical and professional expertise that are beyond the capability or capacity of the government to undertake.

It may be well to point out that the distinctions between professional consulting services and goods as services may be blurred in some cases. Thus, it is imperative that the procuring entity identify the principal objective and the essential aspect of the service in order to determine the more appropriate nature of the procurement. Should the services be primarily a consultancy service, even though it may include or result in the production of goods, the same would be treated as procurement of consulting services and thus, cannot be acquired through Direct Contracting.

Based on the foregoing, to be able to avail of Direct Contracting, the PTPB should first establish that the services of a firm that will conceptualize, develop, and produce the necessary materials for the country brand campaign is considered procurement of goods. Thereafter, it should identify which of the conditions under Section 50 exists to warrant resort thereto.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III