



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

NPM No. 61-2014

15 October 2014

MS. MA. LUISA B. GEQUINANA
Head, Bids and Awards Committee Secretariat
MUNICIPALITY OF CALINTAAN
Municipal Hall, Calintaan,
Occidental Mindoro, 5102

Re: Method of Procurement

Dear Ms. Gequinana:

This refers to your electronic mail dated 12 September 2014 seeking our opinion on the method of procurement to be used relative to the implementation of Supplemental Feeding Program.

As represented, the LGU of Calintaan will implement the 4th cycle of Supplemental Feeding Program with an estimated budget of Two Million Pesos (PhP 2,000,000.00). For the method of procurement to be used for this project, you referred to a letter from DSWD Field Office IV-B (MIMAROPA) recommending the use of Emergency Purchase or Shopping as the method of procurement based on the following reasons:

1. The protocols of the supplementary feeding implemented by DSWD provides for continuous hot meal feeding for 120 calendar days. Gaps between feeding days might result to decrease in weight of the children and will possibly hinder the program from achieving its objective to improve nutritional status of children; and
2. Undertaking public bidding as the procurement method will require at least 24 days to process. Hence, resorting to the said procurement method will cause delays and gaps in between feeding days and defeat the purpose of the program.

As pointed out, you are in a quandary whether to consider such recommendation for the timely implementation of Supplemental Feeding Program due to possible violation of the provisions of Republic Act No. (RA) 9184. It is in this light that you are seeking clarification if such recommendation can be considered as ground for exemption from the use of competitive bidding as the primary method of procurement.

We would like to clarify that the determination of the appropriate method of procurement is within the sole authority and accountability of the HOPE, as the approving authority, and the Bids and Awards Committee (BAC), as the recommendatory body.¹ No

¹ Section 12.1 of the IRR of RA 9184 in relation to Section 48.1 of the IRR of RA 9184.

other agency, office or official may interfere with these functions of the HOPE and the BAC, and dictate the method of procurement to be used. Guided by the provisions of RA 9184 and its revised Implementing Rules and Regulations (IRR), the Procuring Entity (PE), through the HOPE and the BAC, is in the best position to determine the correct method of procurement for all its projects taking into consideration all the surrounding conditions for each procurement project.

Section 10 of RA 9184 explicitly states that all procurements shall be done through competitive bidding, except as provided for in Article XVI of RA 9184. Thus, the Supreme Court, in one of its decided cases, held that competitive bidding may not be dispensed with nor circumvented, and alternative methods of procurement may only be resorted to in the instances provided for by law.² Accordingly, alternative methods of procurement may be resorted to only upon prior approval of the Head of the Procuring Entity (HOPE), in order to promote economy and efficiency, and whenever justified by the conditions for each alternative method of procurement mentioned in Sections 49 to 53 of the IRR of RA 9184.³

Under Section 50 of the IRR of RA 9184, Shopping, as a method of procurement may be employed only when there is unforeseen contingency requiring immediate purchase, or when the procurement involves ordinary or regular supplies and equipment not available in the Procurement Service. In both cases, the amount shall not exceed the thresholds prescribed in Annex "H"⁴ of the IRR of RA 9184. On the other hand, Negotiated Procurement under Section 53.2 (Emergency Cases) of the IRR of RA 9184 may be resorted to only in case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.

It is incumbent upon a party who invokes coverage under the exception to a general rule to prove the fulfillment of the requisites thereof.⁵ Considering that competitive bidding is the general rule in procurement, it is therefore necessary for the PE to justify the existence of the above-mentioned conditions before resorting to Shopping or Negotiated Procurement (Emergency Cases) as exceptions to competitive bidding. In the absence of the required conditions, the PE is mandated to use competitive bidding in the conduct of its procurement activities.

Based on the foregoing, it is our considered view that PE must use competitive bidding in all its procurement projects, unless it can justify the existence of all the conditions warranting the use of any alternative method of procurement and provided that it will comply with all the requirements prescribed in the IRR of RA 9184 regarding the use of alternative methods of procurement.

We hope 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

² *Manila International Airport Authority, et al v. Olongapo Maintenance Services Inc., et al/Antonio P. Gana, et al. v. Triple Crown, etc./Triple Crown etc. v. Manila International Airport Authority, et al.*, G.R. Nos. 146184-85/ G.R. No. 161117/ G.R. No. 167827, January 31, 2008.

³ Section 48.1 of the IRR of RA 9184.

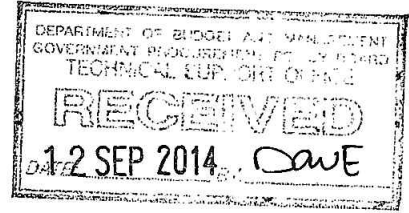
⁴ Thresholds for Shopping and Small Value Procurement.

⁵ *Librado M. Cabrera, et al. v. Hon. Simeon V. Marcelo, et al.*, G.R. Nos. 157419-20, December 13, 2004 citing *Rural Bank of Compostela v. Court of Appeals*, 337 Phil. 521, 533 (1997).

12/26/2014

GPPB

From: Ma.Luisa Gequinana <mgequinana@yahoo.com>
Sent: Friday, September 12, 2014 3:40 PM
To: gppb@gppb.gov.ph
Subject: query on supplemental feeding
Attachments: Scan_letter_mswd.pdf



The GPPB-Technical Support Office
Unit 2506 Raffles Corporate Center
Ortigas Center, Pasig City

Sir/Ma'am.

We wish to clarify something about the implement did not undergo bidding process. The LGU directly the second failure of bidding and now it is already Php2,000,000.00 this year. Same procedures will be Director III of DSWD-Field Officer IV-MIMAROPA re EMERGENCY PURCHASE or SHOPPING.

① GPPB Authority

② Sec. 10

Stated in the attached letter of Annie E. Mendoza, Field Office IV-B (MIMAROPA) recommending alternate SHOPPING for the following reasons:

③ Function of BAC & HOPE
→ Mode of Procurement

DR

a) The protocols of the supplemental feeding decrease in weight of the children and will possibly national status of children.

b) Undertaking public bidding as the procurement Hence, resorting to the said procurement method purpose of the program.

the

I'm so afraid that we might violate certain provisions the Head of BAC Secretariat, I am also acting as Chief Order is being initiated in the Office of General Secretary Executive. I don't want to be held responsible for actions?

ig
ie

Is the recommendation of the above cited direct bidding process? Did they violate certain provisions Inspection and Acceptance Report being the GS procurement?

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he

Again, I don't want to be held responsible for the peace and secured of my decision? Please help me find the answer.

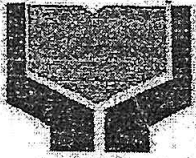
Attached is the letter of Ms. Annie E. Mendoza of DSWD-Field Office IV-B (MIMAROPA)

Thank you for your advise on this regard.

Very truly yours,

Ma.Luisa B. Gequinana
Head BAC Secretariat
OIC-GSO

July 23 Sep 2014
Sir/Secretary,
please prepare OPINION.
TGC
SS



Republic of the Philippines
Department of Social Welfare and Development
Field Office IV-B (MIMAROPA)

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15 October 2012

HON. LILY R. ESTOYA
Mayor
Municipality of Calintaan,
Municipal Hall, Calintaan,
5102 Occidental Mindoro

Attention: **THE BIDS AND AWARDS COMMITTEE**

Dear Mayor Estoya:

This refers to the Supplementary Feeding Program (SFP) being implemented in the Day Care Centers. We recommend that we consider procurement of food commodities for the SFP under alternative modes of procurement such as **EMERGENCY PURCHASE** or **SHOPPING** for the following reasons:

1. The protocols of the supplementary feeding implemented by the DSWD provides for **CONTINUOUS** hot meal feeding for 120 days. Gaps between feeding days might result to decrease in weight of the children and will possibly hinder the program from achieving its objective to improve nutritional status of children.
2. Undertaking public bidding as the procurement method will require at least 24 days to process. Hence, resorting to the said procurement method will cause delays and gaps in between feeding days and defeat the purpose of the program.

We highly suggest that the local government should prioritize the SFP for we are in the midst of our fight against hunger and malnutrition.

Mr. Mark Angelo R. Lorenzo, our Regional Nutritionist, will closely coordinate with your MSWD Officer concerning this matter. He can be contacted at telephone numbers (02) 303-0533 local 205 / 09497451595.

Thank you for your unparalleled support.

Very truly yours,

VIOLETA A. CRUZ
Regional Director

By:


ANNIE E. MENDOZA
Director III