



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

NPM No. 63-2013

27 June 2013

MR. RUBEN B. CUBERO JR.
Head, Bids and Awards Committee Secretariat
DEPARTMENT OF AGRICULTURE (DA)
REGIONAL FIELD OFFICE (RFO) No. 2
Tuguegarao City, Cagayan 3500

Re: Use of Limited Source Bidding (LSB) or Lease-to-Own Agreement in the Acquisition of Motor Vehicle

Dear Mr. Cubero:

We write in response to your letter inquiring on the propriety of relying on the last sentence of Section 46 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 as legal basis for your planned purchase of a brand new utility motor vehicle through lease purchase or lease-to-own contracts; and the propriety of resorting to LSB as the mode of procurement to acquire the said vehicle.

With regard to the first inquiry, please note that Section 46 of the IRR must be understood in its entirety to appreciate the scope and import of the last sentence, which provides that "(l)ease may also cover lease purchases or lease-to-own and similar variations". The first sentence of Section 46 states that "(t)he lease of **construction and office equipment, including computers, communication and information technology equipment**, are subject to the same public bidding and to the processes prescribed under the Act and this IRR". The entire provision, therefore, pertains only to the lease of a specific class of subjects – construction and office equipment. As such, the motor vehicle under the planned procurement activity must fall within the class of construction and office equipment in order for DA-RFO2 to properly invoke Section 46.

This does not mean, however, that procuring entities cannot lease, or enter into a variety of lease agreements for motor vehicles. While lease-to-own of motor vehicles is not contemplated under Section 46 of the IRR, which specifically relates to construction and office equipment, Section 5(r) of the IRR expressly defines goods as including "related" or "analogous services," such as, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. Undoubtedly, motor vehicles are essential in the operations of the procuring entity. In addition, a lease-to-own arrangement is a variant of lease which involves procurement as defined under Section 5(aa) of the IRR.¹

¹ A similar opinion was issued under Non Policy Matter No. 65-2007 dated 3 December 2007.

With regard to the second inquiry, we emphasize that the general rule in government procurement is to procure through competitive bidding². The alternative methods, as exceptions to the general rule, may be resorted to only when the contemplated procurement satisfies the strict conditions laid out in Article XVI of RA 9184 and Rule XVI of its IRR.

Section 49 of the IRR provides that LSB may be resorted to only under two possible conditions: (a) procurement of **highly specialized types of goods** and consulting services **which are known to be obtainable only from a limited number of sources**; and (b) procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole. Accordingly, in order to apply LSB on the subject procurement, DA-RFO2 should first establish that the motor vehicle sought to be procured is either a highly specialized type of goods or a major plant component; otherwise, Limited Source Bidding cannot be resorted to; in which case, Competitive Bidding shall apply.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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² Section 10, RA 9184.