

NPM No. 64-2014

17 October 2014

HONORABLE PAZ J. BENAVIDEZ, II
Assistant Secretary for Regulations and OIC - Director
BUREAU OF PLANT INDUSTRY
692 San Andres Street, Malate, Manila

**Re : Qualification of GOCCs for Negotiated Procurement
(Agency-to-Agency) under Section 53.5 of the IRR of RA
9184**

Dear Asst. Secretary Benavidez:

This is in response to your electronic mail dated 10 October 2014 requesting for clarification relative to Sections 23.6 and 24.6 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, as amended by GPPB Resolution No. 12-2013.¹

As represented, the Bureau of Plant Industry (BPI) has a pending procurement of foundation and registered rice seeds with the Philippine Rice Research Institute (PRRI), a government owned and controlled corporation (GOCC). You seek clarification on the applicability to Negotiated Procurement of Sections 23.6 and 24.6 of the IRR of RA 9184, as amended by GPPB Resolution No. 12-2013, which provide that:

GOCC may be eligible to participate in Competitive Bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not attached agencies of the procuring entity.

As a rule, for competitive biddings, GOCCs may only participate if they possess the following qualifications:

- (i) They are legally and financially autonomous;
- (ii) They operate under commercial law; and
- (iii) The GOCCs are not attached agencies of the procuring entity.

As regards Negotiated Procurements, a GOCC, whether chartered or non-chartered may be engaged as Servicing Agency by procuring entities in contracts procured through Agency to Agency modality. GPPB Resolution No. 12-2013 amends Section 53.5 (Agency to Agency) of the IRR of RA 9184 and its Guidelines insofar as it removes the disqualification of non-chartered GOCCs from being engaged as Servicing Agency for projects procured through Negotiated Procurement (Agency-to-Agency).

¹ Dated 10 May 2013, published at the Manila Times on 12 November 2013 and took effect on 13 November 2013.

This being the case, whether chartered or non-chartered, GOCCs may now be engaged as Servicing Agency through Negotiated Procurement under the Agency to Agency modality, once the following conditions² are complied with:

- (i) Conduct of a cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
- (ii) Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity's total procurement budget for each category (i.e. goods, infrastructure, or consulting) as reflected in its approved APP;
- (iii) Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and
- (iv) Servicing Agency owns or has access to the necessary tools and equipment required for the project.

In view of the foregoing, the BPI may award the contract to PRRI using Negotiated Procurement under the Agency-to-Agency modality as sanctioned by Section 53.5 of the IRR of RA 9184, subject to the requirements provided in the Implementing Guidelines on Agency-to-Agency Agreements.

We hope that this opinion issued by the GPPB-TSO 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 further questions, please do not hesitate to contact us.

Very truly yours,

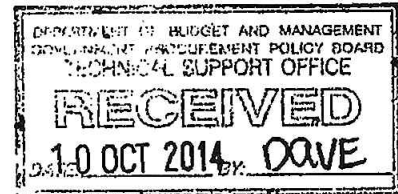

DENNIS S. SANTIAGO
Executive Director V


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² Section 5(a) of the Implementing Guidelines on Agency-to-Agency Agreements

GPPB

From: bac Bpi <bpibac@yahoo.com>
Sent: Friday, October 10, 2014 11:23 AM
To: gppb@gppb.gov.ph
Subject: Clarification letter
Attachments: pdf001.doc



October 8, 2014

Honorable Florencio B. Abad
Chairperson, Government Procurement Policy Board
Secretary, Department of Budget and Management
Unit 2506 Raffles Corporate Center F. Ortigas Jr. Road
Ortigas Center, Pasig City

Dear Secretary Abad:

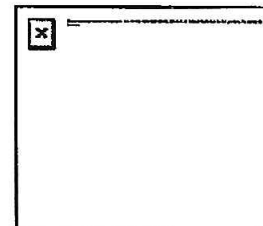
The Bureau of Plant Industry has a pending procurement of foundation and registered rice seeds with the Philippine Rice Research Institute. We cannot proceed with the procurement unless we will be clarified with the amendments of Section 23.6 and 24.6 of the revised IRR of R.A. 9184 which states that "GOCCs may be eligible to participate in competitive bidding only if they can establish that they are legally and financially autonomous, operate under commercial law and are not attached agencies of the procuring entity".

Since the Philippine Rice Research Institute is considered as GOCC, but is not considered an attached agency of the BPI, we would like to clarify if competitive bidding also applies to negotiated procurement, in order for us to finally award the procurement to Philippine Rice Research Institute in as much as the provision being modified in the IRR 9184 applies to agency to agency alternative mode of procurement.

We hope for your immediate response on this matter.

Thank you very much.

Very truly yours,



(sgd) **PAZ J. BENAVIDEZ, II**
Assistant Secretary for Regulations and
OIC-Director