



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

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31 May 2012

HON. VILMA B. CABRERA

*Assistant Secretary, Policy and Programs Group
Chairperson, Bids and Awards Committee*

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT
IBP Road, Batasan Pambansa Complex
Constitution Hills, Quezon City


Re: Negotiated Procurement (Lease of Venue)

Dear Assistant Secretary Cabrera:

We respond to your letter dated 3 May 2012 seeking clarification on whether the Department of Social Welfare and Development (DSWD) can directly resort to Lease of Venue, as a mode of negotiated procurement pursuant to Section 53.10¹ of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 and Implementing Guidelines² for Lease of Privately-Owned Real Estate and Venue, without undergoing a prior public bidding.

As represented, the DSWD received various Audit Observation Memoranda (AOMs) from the Commission on Audit (COA) suggesting that the Bids and Awards Committee (BAC) should first conduct public bidding before resorting to negotiated procurement in the Lease of Venue, in accordance with Section 48.2³ of the IRR of RA 9184.

Please note that Section 48.2 of the IRR of RA 9184 is in line with the principle of competitiveness which states that the procuring entity should extend equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.⁴ This principle is further echoed in Section 10 of RA 9184 which states that all procurement shall be done through competitive bidding, except those falling under alternative methods of procurement.

It should be clarified, however, that although Section 48.2 of the IRR of RA 9184 reiterates the general rule that public bidding is the general mode of procurement, the same section allows procuring entities to resort to alternative methods of procurement in highly exceptional cases and subject to the conditions required by RA 9184, its revised IRR, and applicable guidelines. Among these highly exceptional cases is Negotiated Procurement (Lease of Real Property) under Section 53.10 of the IRR. 

¹Lease of privately owned real property and venue for official use, subject to guidelines to be issued by the GPPB.

²Issued through GPPB Resolution 08-2009 dated 3 November 2009, published in the Daily Tribune on 2 December 2009.

³As a general rule, the Procuring Entities shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. Alternative Modes of procurement shall be resorted to only in the highly exceptional cases provided for in this Rule.

⁴Section 3 (b) of RA 9184.

The Implementing Guidelines⁵ for Lease of Privately-Owned Real Estate and Venue (Guidelines) which provides the procedures and conditions for procurement of contracts of lease of real property does not require resort to public bidding as a pre-condition. It merely requires procuring entities to conduct cost-benefit analysis to assess the feasibility of leasing a privately- owned real estate or venue as against purchasing or leasing from a government-owned real estate or venue.⁶

In view of the foregoing, we wish to clarify that contracts for lease of real property, such as venue, may be acquired by way of negotiated procurement under Section 53.10 of the IRR without need of prior resort to public bidding, but subject to the rules and procedures established in the Guidelines.

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

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⁵Supra note 2.

⁶Section 5.1 of the Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue.