



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

NPM No. 88-2013

25 November 2013

ATTY. AGNES B. SANTOS

Assistant Manager – Customer Service Division

BUREAU OF INTERNAL REVENUE (BIR)

BIR National Office Bldg.,

Agham Road, Diliman,

Quezon City, Philippines

Re: Information and Communication Technology (ICT) Procurement

Dear Atty. Santos:

This refers to your letter dated 29 August 2013, in relation to the earlier letter of Deputy Commissioner Nelson M. Aspe, requesting for a confirmation that the “Managed Contact Center Solutions” Project (Project) of the BIR may be categorized as “General Support Services” defined under the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184, otherwise known as the Government Procurement Reform Act.

It is represented that the BIR is preparing the Terms of Reference for the Project, which primarily involves the lease of contact center facilities, hardware and software that will be utilized to support its Contact Center’s operations. As understood by the BIR, the Project involves the procurement of ICT which, as defined under National Computer Center (NCC) Memorandum Circular No. 2001-01,¹ would refer to “the totality of the means employed to systematically collect, process, store, present and share information. It encompasses computers, telecommunications, and office system technologies, as well as the accompanying methodologies, process, rules and conventions.” As such, the BIR, as Procuring Entity (PE), is inclined to treat this procurement of ICT as procurement of “goods” as defined under Section 5(r)² of the IRR of RA 9184, instead of treating it as “mixed procurement”³ or procurement of consulting services.⁴

¹ Effective 5 March 2001; Guidelines in Leasing Hardware, Software Network and Solutions Based Information and Communication Technology (ICT) Resources.

² **Goods.** Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationary, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term “related” or “analogous services” shall include, but not limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.

³ Section 5(aa) of the revised IRR of RA 9184; **Procurement.** Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity. In case of projects involving mixed procurements, the nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations. (Underscore ours)

⁴ Section 5(i) of the revised IRR of RA 9184; **Consulting Services.** Refer to services for infrastructure projects and other types of projects or activities of the GOP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GOP to undertake such as, but not limited to: (i) advisory and review services; (ii) investment or feasibility studies; (iii) design; (iv)

The PE is in the Best Position to Classify the Nature of Procurement

In addressing this concern, we wish to reiterate our previous opinion,⁵ explaining that “the PE, ably guided by RA 9184 and its IRR, is in the best position to determine the correct classification of its procurement activities, whether it be Goods, Infrastructure Projects or Consulting Services.” When the procurement consists of a mix of goods, infrastructure project, or consulting service, it shall be considered a mixed procurement, and the nature of the procurement shall be determined based on the primary purpose of the contract.⁶

Accordingly, the classification of the procurement project is incumbent upon the PE to determine. Such determination should be based on the PE’s identified needs and the best way by which these needs may be addressed, managed and satisfied.⁷ It is from the identified need that the PE then classifies whether the procurement activity is treated as goods, infrastructure project or consulting service based on the definition of these terms as found in the procurement law and the IRR.

Nature of ICT Procurements

Section 3.0 of NCC Memorandum Circular No. 2001-01¹⁰ states that “ICT Resources can be divided into 4 categories namely Hardware, Software, Manpower/Peopleware, and Services”. As defined under Section 3.0, “**Hardware**” refers to the physical aspect of computers; “**Software**” refers to the various kinds of program used to operate a computer; “**Manpower/Peopleware**” refers to the ICT personnel who would provide consultancy/technical services related to the planning, development, implementation and maintenance of information systems and training; and “**Services**” include other ICT services not covered in the first 3 categories.

Guided by these definitions and taking into consideration the definition of Goods, Infrastructure Projects and Consulting Service” under RA 9184 and its IRR, we may infer that “Hardware” and readily available “Software” would fall under the term “Goods”. On the other hand, “Manpower/People ware” and “Services” would fall either under the term “Goods” if such would involve general support services, or under the term “Consulting Services” if such services are highly technical and would involve professional expertise that are beyond the capability/capacity of the PE to undertake.

However, when the nature of the procurement involves, goods, infrastructure project, and/or consultancy service, it is treated as mixed procurement, in which case the PE would have to determine the primary purpose of the contract in order to identify whether the procurement is to be treated as goods, infrastructure project or consulting service, and consequently determine the appropriate, rules and procedures to apply.

Conclusion

In view of the foregoing discussions, it is incumbent upon the BIR, as the PE, to classify the procurement project it intends to undertake based on its needs. An ICT

construction supervision; (v) management and related services; and (vi) other technical services or special studies. General principles on consulting services are provided for in Annex “B” of this IRR.

⁵ Non-Policy Matter Opinion No. 11-2013, dated 22 February 2013.

⁶ Non-Policy Matter Opinion No. 17-2010, dated 1 June 2010.

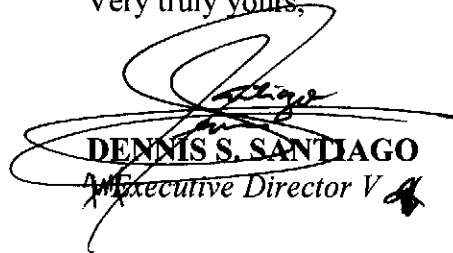
⁷ *Supra* note 5.

¹⁰ *Supra* note 1.

procurement consisting of different components involving goods, infrastructure project or consulting service is regarded as a mixed procurement and the nature thereof is based on the primary purpose of the contract, which must be determined by the procuring entity based on its identified needs and the best way by which these needs may be addressed, managed and satisfied.

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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