

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 09-2005

January 27, 2005

DIR. ROSALINDA G. ALONZO
Vice-Chairman, BAC-Infrastructure
Land Registration Authority
East Ave. cor. NIA Road
Quezon City

Dear Dir. Alonzo:

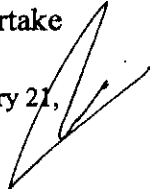
This has reference to your letter-query dated 20 December 2004 anent the validity/enforceability of the agreements earlier entered into by the Land Registration Authority (LRA) with various local government units concerning the construction of the agency's Registry Buildings. As represented, agreement in principle has already been reached with these local government units for the latter to construct, supposedly "by administration," the office buildings in behalf of the LRA. Doubt is now raised as to the status of these agreements in light of the advent of the guidelines on the implementation of projects undertaken "by administration." This issue is the subject of this query before this office.

We had the opportunity to discuss this matter with two of your office's representatives by way of phone conversation, albeit on separate occasions, in view of clarifying the case confronting LRA.¹ Written response is however requested for documentary and other legal purpose that it may serve the agency. Hence, this present discourse.

Here, focal is the validity or enforceability of the agreements that LRA had with the local government units for the construction of its Registry Buildings. However, without need to meet this issue head on, we delve on the propriety of the mode of project implementation sought to be employed and the applicability or inapplicability of the guidelines on project implementation "by administration."

The Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184) provides that procuring entities have the option to undertake

¹ Phone conversation with Atty. Robert Leyretana on December 21, 2004 and Mrs. Rojo on January 21, 2005.



projects "by administration" in the cases mentioned in Section 53 (b) thereof. This same provision is made even clearer in GPPB Resolution 08-2004, Annex "A" which sets forth the guidelines for the implementation of projects undertaken "By Administration" or by force account. The pertinent portion of said guidelines is reproduced as follows:

- 2.1. Unless otherwise provided by law, projects costing not more than Two Million Pesos (P2,000,000.00) may be undertaken by administration or force account under the following circumstances:
 - a) 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; and
 - b) Where there has been failure of public bidding for the second time as provided under Section 35 of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).
- 2.2. To undertake projects by administration, the implementing agency should own the tools and construction equipment to be used or have access to such tools and equipment owned by other government agencies.
- 2.3. To undertake projects by administration, prior approval of the head of the procuring entity concerned shall be obtained.

As may readily be culled from the afore-cited rules, only in the situations or conditions mentioned may the procuring entity resort to project implementation "by administration." Thus, outside of those mentioned, procuring entities are not allowed to administer by themselves the implementation of the project.

Project implementation "by administration" contemplates the execution by the supposed procuring entity of the project either by any of the following: (a) the use of their own tools/equipment and in-house labor capability; (b) by their own tools/equipment and the labor component of which is awarded thru pakyaw labor contracts; or (c) by tools/equipment owned by other government agencies but which it has access, with the labor component either in-house or acquired thru pakyaw

contracts. Ultimately, the feature that defines this concept is the fact that the supposed procuring entity opts to implement the project through utilization primarily of its own resources.

Significantly, as in the case of the agreements between LRA and various local government units, the concept of "by administration" projects is opposed to the concept of "outsourcing" project implementation which latter case connotes reliance of the execution of the project to a different entity. In that case, the tools/equipment component and the labor component of the project belong to the contractor.

In the instant case of the local government units contracted by LRA, they represent themselves no different from any private sector contractor who gets the independent contracting job from the government for the construction of buildings. In this wise, they should be placed in a level plane and equal with those we have set our present standards of competition for and against – the private bidders.

In other words, the set-up contemplated by LRA in the construction of its Registry Buildings is outside the signification of the rules on project implementation "by administration," to say the least. It may however be helpful to add, the set-up being considered by LRA may prove faulty for want of basis in the law and the rules on procurement.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III