



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

NPM No. 92-2014

28 October 2014

DR. SARAH C. TANGHIAN, DMD, MPA
Municipal Administrator/ MDRRMO Designate
MUNICIPALITY OF MONKAYO
PROVINCE OF COMPOSTELA VALLEY
Monkayo, Compostela Valley

Re: Lease of Privately-Owned Venue; Conflict of Interest

Dear Dr. Tanghian:

This pertains to the letter of Director Gary R. Martel, Regional Director, Department of Budget and Management - Regional Office XI, dated 3 October 2014, referring the Honorable Municipal Administrator's letter of 18 September 2014, seeking our opinion relative to the legality of conducting the training of the Municipality, at the venue owned by the Municipal Vice-Mayor, *sans* competitive bidding as a mode of procurement.

As represented, the query is based on whether the Municipality can directly transact with the owner of the venue, the Vice-Mayor, who happens to be the brother of the Municipal Mayor. In the same letter, there are two (2) issues raised relative to the following matters: (1) Lack of Public Bidding; and (2) Possible Conflict of Interest.

It is in this context that our opinion is being requested.

Negotiated Procurement; Lease of Venue

Pursuant to Section 10 of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), all procurement shall be done through competitive bidding. Section 48.2 of Rule XVI of the IRR of RA 9184 reiterates the rule that competitive 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 is Negotiated Procurement through Lease of Real Property modality under Section 53.10 of the IRR.

The *Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue (Guidelines)* that 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 before this modality can be utilized by the procuring entity. It requires the procuring entity 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.¹

Thus, the Municipality may resort to Negotiated Procurement through Lease of Real Property modality as an exception to the general mode of procurement.

Conflict of Interest

As a rule, under Section 7(a) of Republic Act (RA) No. 6713,² it is unlawful for any public official and employee to have any financial or material interest, directly or indirectly, in any transaction requiring the approval of their office. The said prohibition was reinforced by Section 89(a)(1) of the the Local Government Code,³ which prohibits any local government official or employee, directly or indirectly to engage in any business transaction with the local government unit in which he is an official or employee, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm. Thus, being an elective official of the same Municipality, the Vice-Mayor, as owner of the venue, is proscribed to participate in the procurement activity of the Municipality.

Moreover, under Section 47 of the IRR of RA 9184, the disqualification of a bidder who is related to the Head of the Procuring Entity (HOPE), members of the Bids and Awards Committee (BAC), the Technical Working Group (TWG), and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree, is without any exception or condition. Hence, a bidder should be disqualified in the event such relation is determined to be existing.

It bears stressing that the prohibition under RA 9184 and its IRR is intended to avoid any conflict of interest between persons who undertake the procurement and the prospective bidders. Apart from being the Vice-Mayor, since the owner of the venue is the brother of the Mayor, the relationship is clearly within the third civil degree of consanguinity, and this fact disqualifies the bidder from participating in the procurement activities of the Municipality whether under competitive bidding or through alternative methods of procurement.

In view of the foregoing, we wish to clarify that contracts for lease of real property, such as venue, may be procured by way of negotiated procurement under Section 53.10 (Lease of Real Property) of the IRR without need of prior resort to public bidding, but subject to the rules and procedures established in the *Guidelines*. Additionally, the Code of Conduct and Ethical Standards for Public Officers and Employees and the Local Government Code prohibit any local government official or employee, directly or indirectly to engage in any business transaction with the local government unit in which he is an official or employee, whereby money is to be paid out of the resources of the local government unit to such person or firm. Further, a bidder should be disqualified if he is related to the HOPE, members of the BAC, the TWG, BAC Secretariat, head of the PMO or the end-user unit, and the project

¹ Section 5.1 of the Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue

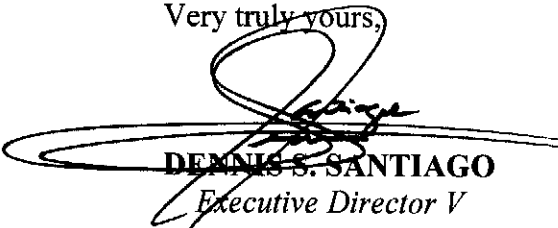
² An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations thereof and for Other Purposes.

³ Republic Act No. 7160

consultants, within the third civil degree of consanguinity or affinity up to the third civil degree.

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

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V

Copy Furnished:

HON. GARY R. MARTEL

Regional Director

DEPARTMENT OF BUDGET AND MANAGEMENT

REGIONAL OFFICE XI (DBM-RO XI)

Km. 3 McArthur Highway, Matina, Davao City



1/16/15

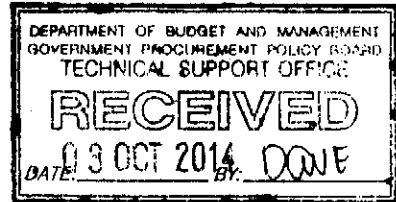


REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
REGIONAL OFFICE XI

Km. 3 McArthur Highway, Matina, Davao City
Tel. No. 297-3323 • Fax No. 299-2344

Ref. No. XI2014100727

October 3, 2014



ATTY. DENNIS S. SANTIAGO
Executive Director
Technical Support Office
Government Procurement Policy Board
2506 Raffles Corporate Tower
F. Ortigas Jr. Road, Ortigas, Pasig City

Jan / [Signature]

please prepare OPINION

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Dear Director Santiago,

We are forwarding for your resolution the attached query from the Municipality of Monkayo, Compostela Valley on the legality of conducting their Water Search and Rescue (WASAR) training at the venue owned by their Municipal Vice-Mayor, who is also a brother of the Municipal Mayor.

The query touches on whether or not they can directly transact with the party concerned without public bidding. There are two (2) issues involved as follows;

1. Lack of Public Bidding
2. Possible Conflict of Interest

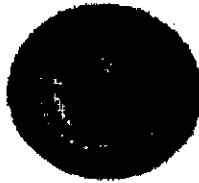
For your immediate resolution, please.

Please send your reply directly to the municipality concerned, copy furnished our office for our information and guidance.

Best Regards.

Very truly yours,

[Signature]
GARY R. MARTEL, CPA, MPA, CESO IV
Regional Director



Republic of the Philippines
Province of Compostela Valley
Municipality of Monkayo



MUNICIPAL DISASTER RISK REDUCTION AND MANAGEMENT OFFICE
008

September 18, 2014

The Chairman
Government Procurement Policy Board
Metro Manila

Thru: DIR. GARY R. MARTEL, CPA,MPA, CISO IV
Regional Director
DBM, Davao City

SIR/MADAM:

Greetings!

The Municipality of Monkayo is a recipient of the Disaster Preparedness and Response (DPR) Programme from World Food Programme (WFP). The objectives of which is building resilience against disasters and impacts of climate change. One of the project components is the capability building for all barangays which is the Community Based Disaster Risk Reduction and Management (CBDRRM) Training.


One of the requirements of this capability building activities is a venue where swimming pool is available for basic water search and rescue (WASAR) training. Unfortunately, there is only one venue which can serve our need for the said training. However, the proprietor is the Municipal Vice Mayor of this municipality who also happens to be the younger brother of our Municipal Mayor.


Since our budget is just enough to fund the training within the municipality, we would like to inquire if it is allowed that we will use the training venue of the Municipal Vice Mayor, considering the number of participants coming from the 21 barangays. We believed is advantageous to the government than bringing them all to other venue outside the municipality with meager budget.

Time is of the essence since the grant is only up to November 15, 2014 and we are chasing with time to beat the timeline.

Hence, we are asking your valuable insights accorded to this letter.

Very truly yours,


SARAH M. SUMBISAN, DMD,MPA
Municipal Administrator/MDRRMO Designate

DEPARTMENT OF DISASTER RISK REDUCTION AND MANAGEMENT	
Regional Office XI	
R E C E I V E D	
By:	
Date:	10/2/14
Time:	4:58 pm

received: Alvarado 10/01/14