



**GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE**

NPM No. 97-2012

0 August 2012

MS. JULIA ELLA-MORENO
Supervising Auditor
PHILIPPINE DEPOSIT INSURANCE CORPORATION
Makati City

Re: Section 53(e) of IRR-A as a self-executing provision

Dear Ms. Ella-Moreno:

We respond to your letter dated 6 February 2012 seeking clarification on whether Government Procurement Policy Board (GPPB) Resolution No. 03-2007 dated 30 March 2007, which amended Section 53(e) of the Implementing Rules and Regulations – Part A (IRR-A) of Republic Act (RA) No. 9184, is self-executory or requires the issuance of guidelines for its implementation.

Please be informed that on 22 July 2009, GPPB issued Resolution No. 03-2009 which approved the Revised IRR, thereby superseding IRR-A. As such, Section 53(e) of IRR-A is now incorporated and set forth in Sections 53.5 and 53.6 of the IRR under Agency-to-Agency and Procurement Agent modalities. Even in the absence of guidelines to implement the former Section 53(e) of IRR-A or the present Sections 53.5 and 53.6 of the IRR, alternative method of Negotiated Procurement may be resorted to by procuring entities.

These two (2) modalities of negotiated procurement, by their nature, can be implemented and carried out even in the absence of any GPPB guidelines implementing them. The two modalities: a) agency-to-agency agreements; and b) procurement agent, need not require any details for their implementation and enforceability. Hence, this office has previously opined that a procurement agent may be recruited and hired in order to assist a procuring entity directly or train their staff in the management of a procurement function.¹

Negotiated Procurement under then Section 53(e) of IRR-A and the present Sections 53.5 and 53.6 of the IRR are self-executing provisions despite the clause that the “GPPB shall issue guidelines to implement said provision”. The said provisions need not require future legislation for their enforcement.² Guidelines supplying details for a law’s implementation are needed when the law, by its nature, cannot be carried out unless and until there are details providing for its implementation. When the law can be carried out without providing any details for its implementation it is treated as a self-executing law. Thus, Negotiated Procurement under the present Sections 53.5 and 53.6 of the Revised IRR

¹Non-Policy Matter 026-2010.

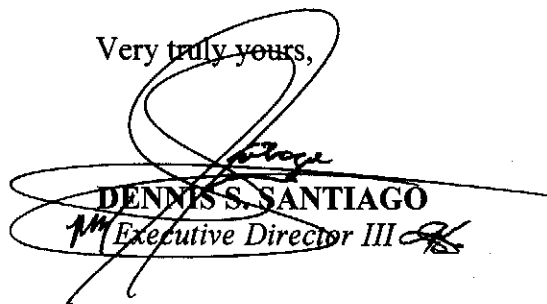
²Tondo Medical Center Employees Association et al. vs. Court of Appeals, et al., G.R. No. 167324, 17 July 2007.

and the old Section 53(e) of IRR-A, by their nature, can be carried out even without providing details for their implementation.

In addition, please note that the GPPB already issued the implementing guidelines³ on agency-to-agency agreements pursuant to Section 53.5 of the Revised IRR. As per effectivity date, the observance of such guidelines implementing agency-to-agency agreements is mandatory. However, the guidelines implementing Section 53.6, with respect to procurement through a procurement agent, has yet to be issued by the GPPB. Nevertheless, as earlier mentioned, Section 53(e) of the IRR-A, as superseded by Section 53.5 and 53.6, is a self-executing provision. Thus, the provision on Negotiated Procurement through a procurement agent may be implemented despite the absence of implementing guidelines from the GPPB.

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 presented and may not apply to a different set of facts and circumstances. 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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³GPPB Resolution 018-2007 dated 31 May 2007 and published in the Official Gazette on 14 January 2008.