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Department of Budget and Management

**GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE**

NPM No. 99-2012

13 August 2012

MS. SARAH EDNA A. TABIJE
Chairperson, Bids and Awards Committee (BAC)
PROFESSIONAL REGULATION COMMISSION (PRC)
P. Paredes corner N. Reyes Streets,
Sampaloc, Manila

**Re: Direct Contracting under the Guidelines on Procurement of Water,
Electricity, Telecommunications and Internet Service Providers**

Dear Ms. Tabije:

We respond to your letter dated 25 June 2012 requesting clarification on the propriety of resorting to Direct Contracting pursuant to Government Procurement Policy Board (GPPB) Resolution 019-2006 or the Guidelines on Procurement of Water, Electricity, Telecommunications and Internet Service Providers (Guidelines).

As represented, PRC is embarking on a full computerization of its services, particularly the frontline services. It intends to use the Internet Protocol Virtual Private Network (IP VPN) taking into account the security concerns of its services as well as the speed and connectivity requirements. Since its current provider, Eastern Telecommunications, is incapable of providing said service, PRC explores the technical capability of other service providers and identifies Philippine Long Distance Telephone (PLDT) as the one meeting the requirements. Thus, PRC would like to resort to Direct Contracting with PLDT subject to the requirements embodied in GPPB Resolution 019-2006 for its IP VPN.

As a general rule, a Procuring Entity (PE) should adopt competitive or public bidding as the general mode of procurement. It is only under highly exceptional circumstances that resort to alternative methods of procurement will be allowed.¹ Hence, the determination and accountability for the use of any of the forms of negotiated procurement rest primarily with the PE as it is in the best position to determine the existence of the required conditions.²

Section 50 of the IRR of RA 9184 contemplates three (3) conditions to validate the resort to Direct Contracting where the supplier is simply asked to submit a price quotation or pro-forma invoice together with the conditions of sale. These refer to (a) procurement of goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.*, when patents, trade secrets, and copyrights prohibit others from manufacturing the same item;

¹ Sections 10 and 48.2 of the IRR of RA 9184.

² NPM No. 58-2012 dated 14 May 2012.

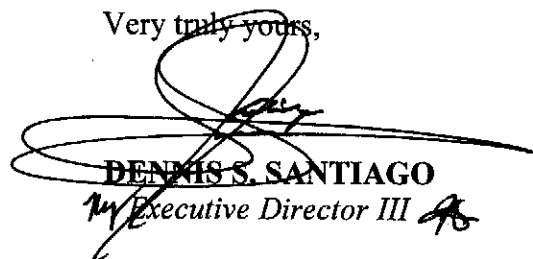
(b) when the procurement of critical components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or (c) those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

The requirements in Section 50 of the IRR of RA 9184 are consistent with Section 3.3.2.2 of the Guidelines, which states that resort to Direct Contracting is possible if there is only one service contractor operating within the area. Thus, this condition must be present in procuring the services of PLDT. Considering that PRC's current provider Eastern Telecommunications is technically incapable to provide the IP VPN, per PRC's representation; and that PLDT is determined to be capable of rendering such service, then Direct Contracting under the Guidelines can be pursued. Moreover, please take note that the referenced provision contemplates the non-existence of a binding contract between the PE and an internet service provider (ISP). Per your representation, there is an existing contract between PRC and Eastern Telecommunications; hence, as it is, Section 3.3.2.2 of the Guidelines may not be applicable to the present situation. Given that the option to maintain the two (2) service providers may not be feasible due to sharing problems per your Executive Summary, kindly refer to the Guidelines on Termination of Contracts³ to resolve this matter with Eastern Telecommunications before proceeding with your intended procurement of IP VPN services from PLDT.

Based on the foregoing, we are of the opinion that the determination of what alternative mode of procurement should be pursued lies within the authority of the PE. For Direct Contracting, all the conditions for its use must be satisfied by PRC in the procurement of its IP VPN. Since PRC has identified PLDT as the only ISP that can meet its IP VPN requirements, then it may contract the latter's services following the Guidelines on Procurement of Water, Electricity, Telecommunications and Internet Service Providers. However, considering that a contract still exists between PRC and Eastern Telecommunications, a careful review and study of the Guidelines on Termination of Contracts will be in order to sufficiently comply with the rudiments embodied in Section 3.3.2.2 of the Guidelines.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to 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 III

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³ GPPB Resolution 018-2004 dated 22 December 2004.