



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

NPM No. 107-2012

29 August 2012

ATTY. SEVERO C. MADRONA, JR.
City Legal Officer I
Vice-Chairman, Bids and Awards Committee
OFFICE OF THE CITY LEGAL OFFICER
Room 208, Pasay City Hall
F.B. Harrison Street, Pasay City

Re: Concession of a Private Mall Operator for the Operation of a City Mall

Dear Atty. Madrona:

We respond to your letter¹ requesting clarification on whether the concession of a private mall operator for the operation of the Pasay City Mall is covered by Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

As represented, the City Government of Pasay owns a City Mall, the operation of which it now intends to award to a private mall operator, without need of public bidding as part of its public-private partnership agenda to increase its revenue, as well as for simplicity, efficiency, and economy. Clarification is sought on whether the opinion embodied in Non-Policy Matter (NPM) 043-2004 issued by this office still prevails and is applicable in the aforementioned public-private partnership agenda of Pasay City.

We wish to inform you that the attendant circumstances under NPM 043-2004 are not necessarily the same with that of the operation of the Pasay City Mall. In the said opinion, we noted the nature and peculiarity of the activity of the Department of Labor and Employment (DOLE) and opined that the concession of canteen operation to a service provider is a contract of lease considering that a monthly rental is to be paid by the concessionaire. The office opined further that the leasing out of the government property did not involve the acquisition by the government of any particular equipment, material or personal property, or contractual services. Hence, it was resolved under NPM 043-2004 that leasing out of government building and spaces remain to be governed by Executive Order 301², Series of 1987, and not RA 9184.

In contrast, the case of the operation of the Pasay City Mall does not involve the lease of property, but rather the acquisition of the services of a private mall operator to increase its revenue. It is worthy to stress that the DOLE merely leased out space to the lessee to establish and operate a canteen as mentioned under NPM 043-2004. On the other hand, the Pasay City Mall is patrimonial property of the LGU, which it operates for public service. It is property

¹Dated 5 August 2011.

²"Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal", 26 July 1987.

owned by the State, other than for public use³. Thus, in engaging a private entity to operate, manage and maintain the mall owned by Pasay, the LGU, in effect, will not simply lease out space, but will be outsourcing a function it is currently performing or engaging others to perform.

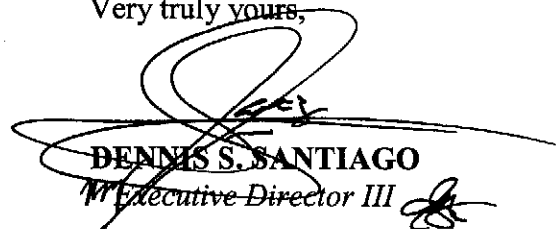
In line with this, we note that RA 9184 and its revised IRR apply to three (3) kinds of procurement, *i.e.*, (a) goods and general support services; (b) infrastructure projects; and (c) consulting services. In the case of the Pasay City Mall, there is an intention to award the operation, management and maintenance of the City Mall to a private mall operator, which is procurement of services in general. Thus, it may involve procurement of consulting services or general support services depending on the nature and character of the services to be procured.

Pursuant to RA 9184 and its revised IRR, "consulting services" refer to services for Infrastructure Projects and other types of projects or activities of the Government requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the government to undertake.⁴ "General support services", on the other hand, refer to services other than consulting services.⁵

All told, we are of the view that the intention to lease out the Pasay City Mall to a private mall operator actually involves outsourcing of services, whether it be consulting or general support services, and would thus require public bidding.

We hope that our advice sufficiently addresses your concern. 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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³ Province of Zamboanga del Norte vs. City of Zamboanga, et al., L-24440, 28 March 1968.

⁴Section 5(f) of RA 9184.

⁵*Id.*, Section 5(h).