

NPM No. 11-2009

26 February 2009

MR. JUAN DE ZUNIGA, JR.

Chairman

BANGKO SENTRAL NG PILIPINAS

Vito Cruz cor. Mabini St., Malate, Manila

Re : Multi-Year Contracts

Dear Mr. De Zuniga:

We respond to your letter dated 31 March 2008 requesting for clarification on the multi-year contract provisions under the *Guidelines on the Procurement of Security and Janitorial Services* (hereinafter referred to as the *Guidelines*) which was approved and adopted through the Government Procurement and Policy Board (GPPB) Resolution No. 24-2007, dated 28 September 2007 vis-à-vis the various requirements of the Bangko Sentral ng Pilipinas (BSP), such as lease of office space, lease of photocopying machines, computers and printers, and repair and maintenance agreements for equipment and network requirements.

Specifically, you are inquiring whether BSP can enter into multi-year contract agreements for requirements other than security and janitorial services. If the answer is in the affirmative, then whether BSP still needs to secure a Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM).

At the outset, please be advised that Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) are silent on the issue of multi-year contracts. The *Guidelines*, on the other hand, does not make any categorical pronouncement that multi-year contracts may be availed of only in the case of janitorial and security services contracts. Said *Guidelines* simply states that it shall be applicable to the procurement of janitorial and security services.

Further, Section 24 of the General Provisions of the 2007 General Appropriations Act or R.A. 9401 provides that no agency shall enter into a multi-year contract without securing a MYOA issued by the DBM. Corollarily, the DBM has issued DBM Circular Letter No. 2004-12 dated 27 October 2004 which prescribes the guidelines and procedures for the implementation of multi-year contracts.

Anent thereto, you have propounded that, the act of any agency to enter into a multi-year contract is the grant of a MYOA from DBM, which agency is tasked to

ensure the inclusion of proposed appropriation for the period covered therein by the Congress, as the appropriation approving branch of the Government. However, as per your representation, you take exception to the foregoing in view of the fact that the BSP, while being a government-owned corporation, is vested with fiscal and administrative autonomy¹, and with authority to adopt its own annual budget and authorize such expenditures as are in the interest of the effective administration and operations of the BSP in accordance with applicable laws and regulations.² (underscoring ours). By virtue of such powers, you posit that an appropriation by the Monetary Board, as the head of the agency, would not need any formal approval or appropriation from Congress or from another government agency.

Preceding from the above representation, this office seems inclined to posit the view that a DBM clearance for the issuance of a MYOA would, likewise, no longer be necessary.

Further, recourse must be made to your corporate charter, for purposes of determining whether entering into multi-year contracts, for any and all types of services/arrangements, is among the powers granted to your governing board (i.e. Monetary Board), which, as per R.A. 9184, is deemed as the Head of the Procuring Entity (HOPE) for government-owned and controlled corporations. Granting that the said power is provided, a resolution issued by the governing board allowing multi-year contracts for the BSP's requirements, such as, lease of office space, photocopying machines, computers and printers, and repair and maintenance agreements for equipment, could suffice.

However, it bears stressing that the general mode for government procurement, such as these multi-year contracts you are proposing, is still public bidding under R.A. 9184 and its IRR-A. In the same vein, the guidelines on MYOA, and related issuances, insofar as they may be applicable and/or appropriate, must be duly observed.

We trust that we have provided sufficient guidance on the matter. Should you have any further questions, please do not hesitate to contact us.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III

¹ Section 1, R.A. 7653 (The New Central Bank Act)

² Section 15(d), R.A. 7653



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

Bry,
Pls. see my Shared Doc.
File Name: BSP. Multi-Year Contracts.

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2/26/09

04 February 2009

MR. JUAN DE ZUNIGA, JR.
Chairman
BANGKO SENTRAL NG PILIPINAS
Vito Cruz cor. Mabini St., Malate Manila

Re : **Multi-Year Contracts**

Juan de Zuniga Jr.
Dear Mam Calzado:

We respond to your letter dated 31 March 2008 requesting for clarification on the Multi-year contract provisions provided under the Guidelines on the Procurement of Security and Janitorial Services which was approved and adopted through Government Procurement Policy Board (GPPB) Resolution No. 24-2007, dated 28 September 2007 vis-à-vis the various requirements of the Bangko Sentral ng Pilipinas (BSP), such as lease of office space, lease of photocopying machines, computers and printers, and repair and maintenance agreements for equipment and network requirements.

Specifically, you are inquiring whether ~~the privilege of entering into a multi-year contract is limited only to procurement of security and janitorial services.~~ *BSP can enter into multi-year contract agreements for requirements other than security and janitorial services.* ~~procuring entities are allowed to enter into a multi-year contract as regards to other general support services,~~ *If that security and janitorial services,* does BSP still have to secure a Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM)? *If the in the affirmative,*

At the outset, please be advised that Republic Act (R.A.) No. 9184 and its Implementing Rules and Regulations Part A (IRR-A) are silent on the issue of multi-year contracts.

Nevertheless, as you have stated in your letter, Section 24 of the General Provisions of the 2007 General Appropriations Act or R.A. No. 9401 provides that no agency shall enter into a multi-year contract without securing a Multi-Year Obligational Authority issued by the Department of Budget and Management (DBM). *Corollary thereto, the DBM has issued a*

~~For additional guidance purposes, we would like your good office to also take note of DBM Circular Letter No. 2004-12 dated 27 October 2004 which prescribes the guidelines and procedures for the implementation of multi-year contracts.~~ *kindly*

Further, we would like to direct the attention of the procuring entity concerned to its corporate charter or legislative franchise, if any, for purposes of determining

whether entering into multi-year contracts is among the powers granted to the governing board. If the charter of BSP allows the governing Board to enter into multi-year contracts, the Board, as the Head of the Procuring Entity (HOPE) for Government Owned and Controlled Corporations (GOCCs) and Government Financing Institutions (GFIs), within the limits provided for by its charter and applicable laws, may pass a Resolution giving permission to its office to enter into a multi-year contract.

Hence, BSP may enter into a contract on a multi-year basis for requirements other than security and janitorial services, such as lease of office space, lease of photocopying machines, computers and printers, and repair and maintenance agreements for equipment and network requirements, provided that a Resolution giving permission to its office to enter into a multi-year contract is issued by its Board; provided further that it is within their the corporate charter or legislative franchise.

Lastly, it bears stressing that the general mode for government procurement, such as these multi-year contracts you are proposing, is still public bidding under R.A. 9184 and its IRR-A.

Notwithstanding the foregoing, relative to your concern, we wish to inform you that the Government Procurement Policy Board (GPPB) is currently in the process of revisiting/revising the IRR-A of R.A. 9184, in view of the numerous feedbacks, complaints and recommendations from national government agencies, local government units, and other stakeholders, to further streamline the implementation of the procurement law. One of the items being considered is the possibility of increasing the threshold amount for Shopping, which is consistent with the GPPB's mandate to conduct periodic review of said amount in order to reflect changes in economic conditions and for other justifiable reasons.¹

We trust that we have provided sufficient guidance on the matter. Should you have any further questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

¹ Section 52.



Bangko Sentral ng Pilipinas

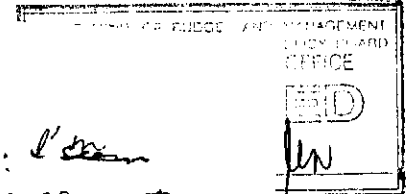
File/Ref. No. ODDPG-08-023

BIDS AND AWARDS COMMITTEE

31 March 2008

Atty. Ruby U. Alvarez
Executive Director III
Government Procurement Policy Board
Technical Support Office
Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City

Enunio,
Pls. handle. I'm
agreeable to their request,
unless you believe otherwise.
Sign in behalf of the office.
4/11/08



Dear Atty. Alvarez:

This refers to the Government Procurement Policy Board (GPPB) Resolution No. 24-2007 dated 28 September 2007 approving and adopting the Guidelines in the Procurement of Security and Janitorial Services. Section 5 of the said guidelines allows procuring entities to enter into multi-year contracts, but not to exceed three (3) years, in the procurement of security and janitorial services. We understand that the legal basis therefor is Section 24 of the General Provisions of the 2007 General Appropriations Act (R.A. No. 9401) which provides as follows:

"Contracting Multi-Year Projects. In the implementation of multi-year projects, no agency shall enter into a multi-year contract without a Multi-Year Obligational Authority issued by the DBM for the purpose. Notwithstanding the issuance of the Multi-Year Obligational Authority, the obligation to be incurred in any given calendar year, shall in no case exceed the allotment released for the purpose during the said calendar year."

The above quoted provision expressly allows government agencies to enter into multi-year contracts with a period/duration of more than one (1) year provided that a Multi-Year Obligational Authority from the Department of Budget and Management (DBM) must first be obtained and that the obligation to be incurred in each year of the covered contract period shall still be in accordance with, and not to exceed, the amount programmed to be expended in each year. Basically, the act of any agency to enter into a multi-year contract is the grant of a Multi-Year Obligational Authority from DBM, which agency is tasked to ensure the inclusion of proposed appropriation for the period covered therein by the Congress, as the appropriation approving branch of the Government.

The BSP is vested with fiscal and administrative autonomy and with authority to adopt its own annual budget and authorize such expenditures as are in the interest of the effective administration and operations of the BSP under Republic Act No. 7653 (The New Central Bank Act)¹. An appropriation by the Monetary Board, as the head of the

¹ "Section 1 – Declaration of Policy. The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation shall enjoy fiscal and administrative autonomy."

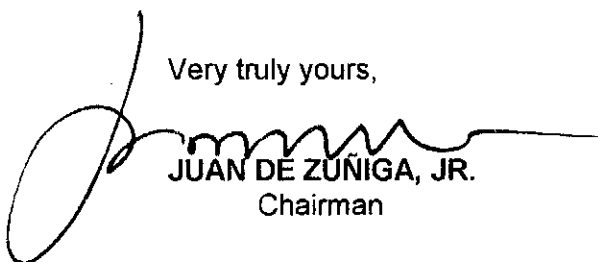
"Section 15(d) – adopt an annual budget for and authorize such expenditures by the *Bangko Sentral* as are in the interest of the effective administration and operations of the *Bangko Sentral* in accordance with applicable laws and regulations."

agency (BSP), therefore would not need any formal approval or appropriation from Congress or from any other government agency.

It is our further view that GPPB Res. No. 2004-2007 does not prohibit BSP to enter into multi-year contract agreements for requirements other than security and janitorial services such as lease of office space, copier machines, computers and printers and repair and maintenance agreements for equipment and network requirements, provided that the approval from the Monetary Board is secured prior to entering into such contract agreements similar to the procedure requiring DBM approval under the General Appropriations Act.

We shall appreciate receiving your confirmation of the above view.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Juan de Zuñiga, Jr.', with a large, stylized initial 'J'.

JUAN DE ZUÑIGA, JR.
Chairman