

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 115-2004

August 18, 2004

DIR. BUENAVENTURA C. GO-SOCO, JR.
Regional Director, Region VIII
National Economic and Development Authority (NEDA)
Project Director, Eastern Visayas Information
Sharing Network (EVISNet)
NEDA Bldg., Government Center
Palo, Leyte

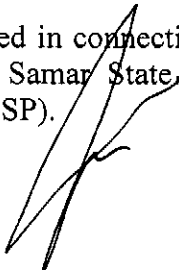
**Re : Purchase of Goods from another Agency of the Government through
Negotiated Procurement**

Dear Dir. Go-Soco:

This refers to your letter dated July 29, 2004, addressed to Executive Director Estanislao C. Granados Jr. of the Department of Budget and Management – Procurement Service (DBM-PS), and forwarded to our office on August 10, 2004, requesting for clarification on a single issue that has to be resolved, to wit:

Whether or not EVISNet, a government project established to promote information exchange among members of the Regional Development Council (RDC) of Region VIII and provide internet access to government agencies and State Universities and Colleges (SUCs), may be considered as an agency of the government, from which goods, such as internet services may be procured by another government agency through Negotiated Procurement under Section 53 (e) of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

This issue was raised in connection with the participation of EVISNet in the conduct of public bidding by the Samar State Polytechnic College, in Catbalogan Samar for an Internet Service Provider (ISP).



Purchase of Goods from another Agency of the Government through Negotiated Procurement

R.A. 9184 and its IRR-A allows the use of alternative methods of procurement in the highly exceptional cases provided in the said procurement law, rules and regulations. One of such alternative methods relative to your issue is Negotiated Procurement under Section 53 of R.A. 9184 and its IRR-A, relevant portion of which is quoted hereunder as follows:

“Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x x

e) **Purchases of goods from another agency of the Government**, such as the PS-DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. x x x” (Emphasis supplied)

In this connection, we quote the definition of **Agency of the Government** under paragraph 4, Section 2, Introductory Provisions of Executive Order No. 292, otherwise known as “The Administrative Code of 1987,” to wit:

Agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein. (Emphasis supplied)

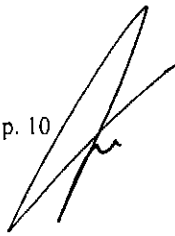
As such, a government procuring entity may undertake Negotiated Procurement under Section 53 (e) of R.A. 9184 and its IRR-A only in the case of procurement of goods and as long as the goods shall be procured from another “agency of the government,” which refers to any of the various units or entities of the government mentioned in the aforementioned definition.

Moreover, as regards the nature of an agency of the government, it is worthy to discuss that an *administrative agency*, as it is commonly referred to, *may be described as a body endowed with quasi-legislative and quasi-judicial powers for the purpose of enabling it to carry out the laws entrusted to it for enforcement or execution.*¹ *An administrative body may be created by the Constitution or by statute.*² Whereas, as regards the termination or abolition of an administrative agency, *if created by the Constitution, the administrative body can be altered or abolished only by constitutional amendment.*³ *But where the body was created only by statute, the legislature that breathed life into it can amend or even repeal its*

¹ Cruz, *Philippine Administrative Law*, 1991 Ed. p. 10

² *Ibid.*, p. 11

³ *Ibid.*, p. 12



*charter, thereby resulting in its abolition, which is justified if made in good faith and not attended by grave abuse of discretion.*⁴

EVISNet Cannot be Classified as an Agency of the Government

Our research yield the following information:

1. EVISNet is a government project established in 1998 for the purpose of promoting information exchange among members of the RDC of Region VIII;
2. The project was conceptualized in support of the President's directive through Administrative Order No. 322 for all government agencies and instrumentalities including local government units to undertake electronic interconnection through the internet to be known as Republic of the Philippines WEB or RPWEB.⁵
3. The creation of EVISNet was endorsed by RDC through its Resolution No. 23, which was approved on September 11, 1998;
4. EVISNet was established under the Grant-in-Aid program of the Department of Science and Technology (DOST), with DOST and NEDA Region VIII as the implementing agencies; such arrangement was contained in two (2) Memoranda of Agreement (MOA) entered into between said government agencies dated November 3, 1998 and January 26, 2000, respectively;
5. Finally, it is NEDA Region VIII that manages, handles and administers the operations, procurement and finances of EVISNet. The Project is headed by the Regional Director who acts as its Project Director.

Based on the foregoing, it is inferred that EVISNet does not fall under the aforementioned definition of *Agency of the Government* considering that the former cannot be properly classified as any of the various units or entities of the government identified in the said definition. A careful reading of the background of EVISNet would reveal that such is in the nature of a government project which is created by a mere resolution, established and operated through an agreement between two contracting government agencies; and hence, may be terminated upon completion of the project, or at the instance of the DOST as so provided in the MOA entered into on January 26, 2000, between the latter as the Grantor, and the NEDA as the Grantee.

On the other hand, as discussed above, an agency of the government may only be created by the Constitution or by statute, not by a mere resolution endorsed by a government entity that is not the legislature; nor through an agreement or contract between two government agencies. In the same way, an administrative agency may only be altered or abolished by constitutional or legislative amendment.

⁴ *Ibid.*, citing *De la Llana vs. Alba*, 112 SCRA 294; Constitution, Article X, Section 1

⁵ <http://www.evis.net.ph/aboutevis.htm>

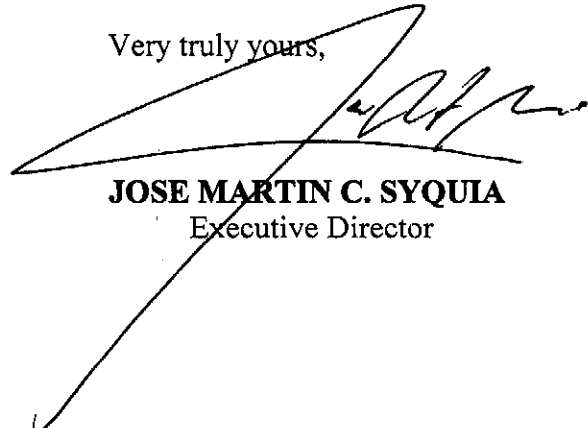
Parenthetically, there is no way that the aforesaid Project, by itself, may be considered as an agency of the government from whom goods may be procured by another government agency through Negotiated Procurement under Section 53 (e) of R.A. 9184 and its IRR-A.

It is our view, however, that should any government agency or SUC wish to procure internet services from EVISNet through the aforesaid alternative method of procurement, such procuring entity should be dealing with and/ or procuring from NEDA Region VIII, as the latter is the government agency that actually handles the operations, finances and procurement for the Project; and further, NEDA is definitely characterized as an Agency of the Government from which procurement of goods by another government entity may be allowed through Negotiated Procurement.

Nevertheless, it is worthy to note that *resort to alternative methods of procurement is allowed only in the highly exceptional cases provided in the IRR-A of R.A. 9184.*⁶ Moreover, *in all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained.*⁷ Hence, we opine that any government agency or SUC which opts to procure the internet services of EVISNet from NEDA Region VIII through Negotiated Procurement should have ascertained and ensured that the said services are, indeed, the most advantageous for their agency, in terms of price and quality.

With the foregoing elucidations, we trust that your issue has been clarified. Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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⁶ See Section 48.2 of the IRR-A of R.A. 9184
⁷ *Ibid.*, Section 48.1