



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

NPM No.116-2012

14 September 2012

ATTY. SOFRONIO B. URSAL
General Manager
GOOD GOVERNANCE BOOKS
19 Pine St. Fairview, Quezon City
1118 Philippines

Re: Exclusive Distributorship

Dear Atty. Ursal:

This refers to your letter dated 25 July 2012, advising this office that Good Governance Books is the publisher and exclusive distributor of all the books authored by your good self, and claiming that the same may be obtained directly from Good Governance Books without need of public bidding pursuant to Section 50 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184. The Certificate of Exclusive Distributorship attached to said letter attests that there are no authorized sub-dealers selling at lower prices and that no suitable substitute can be obtained or available in the market at a more advantageous price to the government.

It is also represented that there are no agents or persons authorized to sell copies of said books other than National Book Store and Central Book Supply, which also serve as book outlets selling at "sale prices".

As discussed in a previous opinion¹, in order to justify the need to procure through Direct Contracting, the Bids and Awards Committee (BAC) should conduct a survey of the industry and determine the supply source. The survey should confirm the exclusivity of the source of goods to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. In addition, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements².

Moreover, the Procuring Entity must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms³. It is only after the BAC has conducted its survey and determined that one of the conditions under Section 50 of

¹ NPM No. 029-2007 dated 30 July 2007.

² Section 12 of RA 9184.

³ Section 4, Part 2, Volume 2, Manual of Procedures for the Procurement of Goods and Services.

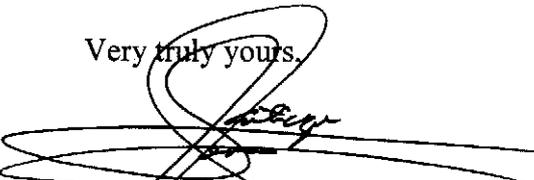
RA 9184 is present that proper recommendation to the HOPE for the use of Direct Contracting⁴ may be made.

Based on the foregoing, the fact alone that Good Governance Books is the publisher and exclusive distributor of all the books authored by your good self does not sanction the immediate resort to procurement through Direct Contracting, in lieu of Competitive Bidding. Under the rules, the PE must first justify the necessity for purchasing the copyrighted books, and must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms, before the PE may decide to procure through Direct Contracting.

In addition, a cursory survey of the market reveals that there are at least three (3) books on government procurement or government contracting written by three (3) different authors.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of the 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



LSD

⁴ Section 18 of RA 9184.