



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

NPM No. 122-2012

8 October 2012

MR. FRANCISCO F. DEL ROSARIO, JR.
President and CEO
DEVELOPMENT BANK OF THE PHILIPPINES (DBP)
Sen. Gil Puyat Avenue corner Makati Avenue,
Makati City

Re: Negotiated Procurement (Agency-to-Agency Agreements)

Dear Mr. Del Rosario:

We refer to your letter dated 7 February 2012 requesting for further clarification on Agency-to-Agency arrangement under Section 53.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184 in connection with your initial letter to us, for which we have issued NPM 16-2012 dated 26 January 2012. Specifically, DBP posits the following questions before this Office:

- 1) Is it not the policy of the law, as deduced from the rule on Negotiated Procurement under Section 53 of RA 9184, to encourage government agencies to source banking services from government financial institutions (GFIs) before deciding to procure these services from the private sector through competitive bidding?
- 2) Are we right in concluding that as an alternative mode of procurement, an Agency-to-Agency agreement is a valid alternative to public bidding, and therefore, cannot be a result of competitive bidding exercised between a GFI and a private bank?

Competitive Bidding is the Primary Mode of Procurement

The policy of RA 9184 and its IRR is to promote transparency and competition in the procurement of goods, infrastructure projects, and consultancy services, which can be achieved through the conduct of competitive bidding. It is only in highly exceptional cases, and when the prevailing conditions warrant, that resort to alternative modes of procurement is allowed.

Although the Implementing Guidelines on Agency-to-Agency Agreements¹ (Guidelines) allows a government agency to procure from another government agency without need of public bidding pursuant to Section 53(e) of the IRR, this is permissible only subject to certain conditions, among which, is the conduct of cost-benefit analysis (CBA) as a

¹ GPPB Resolution 018-2007 dated 31 May 2007, as amended by GPPB Resolution 03-2011 dated 28 January 2011.

means to determine the efficiency, propriety, economy and regularity of the procurement method adopted.

On the other hand, only government agencies having their own charters can participate and act as Servicing Agent, while agencies created under the Corporation Code should compete on equal footing with the private sector. Thus, the option to transact with another government agency through the Agency-to-Agency modality is an exception to the general rule and is subject to several conditions precedent prior to its implementation. Accordingly, it is not accurate to state that government agencies should first secure banking services from GFIs before deciding to procure these services from the private sector through competitive bidding.

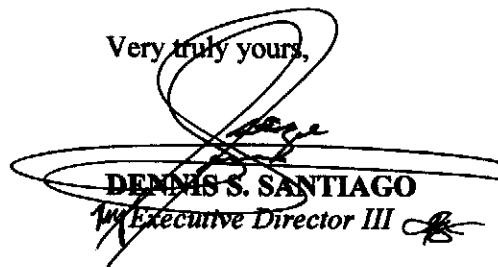
Agency-to-Agency Agreement is Only an Alternative Procurement Facility

We reiterate our previous opinion that resort to alternative methods of procurement under Section 48 of the IRR is possible only in highly exceptional circumstances. Agency-to-Agency procurement is merely one of the negotiated modalities² that may be used under Section 53 of the IRR. GFIs created under the Corporation Code are not prohibited, but are in fact encouraged to participate in public bidding for as long as they are deemed legally, technically and financially eligible. Participation in public bidding requires GFIs to compete with private banks as the former are not given preference over the latter. Further, in case the GFI wins, the resulting contract with the procuring agency will not be in the form of a Memorandum of Agreement as contemplated under Negotiated Procurement (Agency-to-Agency Agreements), but will be in the nature of a contract executed between the government agency and the GFI, as a private bidder.

From the foregoing, we wish to emphasize that the general mode of procurement is Competitive Bidding and no preferential treatment is extended to any GFI, which are expected to competitively bid against private entities. Negotiated Procurement (Agency-to-Agency Agreements) contemplates negotiation with another government agency but this option is only available after conducting CBA and satisfying the conditions laid down in the corresponding Guidelines.

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

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² Other modes of Negotiated Procurement include Two-Failed Biddings, Emergency Cases, Take-Over of Contracts, Adjacent or Contiguous, Procurement Agent, Highly Technical Consultants, Defense Cooperation Agreement, Small value Procurement, Lease of Real Property, NGO Participation, Community Participation and United Nations Agencies.