



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

NPM No. 124-2012

8 October 2012

MS. GLORIA Q. ACHAZO-GARCIA, MD
Chairperson, Bids and Awards Committee (BAC)
OFFICE OF THE NEW BILIBID PRISON
BUREAU OF CORRECTIONS (BuCOR)
NBP Reservation, Muntinlupa City

Re: Procurement of Catering Services

Dear Dr. Garcia:

We respond to your letter dated 26 June 2012 requesting for clarification on the procurement by BuCor of catering services for maximum security prisoners in relation to Republic Act (RA) 9184 and its revised Implementing Rules and Regulations (IRR). BuCor inquires whether or not:

1. Catering services fall under the Goods category;
2. BuCor using the allotted budget for July 2012 may enter into a contract for more than six (6) months; and,
3. BuCor can add the evaluation on the quality of food as additional Terms of Reference based on the specified criteria presented and upon evaluation by the Food and Nutrition Research Institute (FNRI).

Nature of Procurement of Catering Services

Although a reading of the definition of Goods under Section 5(r)¹ of the IRR shows that catering services is not among those expressly included as general support services, nonetheless, catering services fall under the classification of "related or analogous services" that are deemed necessary and essential to the operations of the Procuring Entity (PE). Accordingly, catering services fall under the category of Goods as provided in RA 9184 and

¹ Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.

its IRR, taking into consideration the nature, subject matter and purpose of the procurement activity.

Duration of Contract beyond Six (6) Months

Section 7.3.2 of the IRR of RA 9184 mandates the inclusion of the time schedule of each procurement activity, including contract implementation in the Project Procurement Management Plan (PPMP). The PPMPs are consolidated into the Annual Procurement Plan (APP), which reflects the entirety of the procurement activities that will be undertaken by the PE within the calendar year². From the General Appropriations Act, it can be inferred that contracts entered into by government agencies are generally for one (1) year duration only³, but the contract implementation stage may go beyond the calendar year as initially planned. Under the Manual of Procedures for the Procurement of Goods and Services, the Project Management Office or the end-user unit should determine the period of contract implementation during the procurement planning stage, and include this in the PPMP.

Anent all the foregoing, as long as the procurement of catering service is reflected in the PE's 2012 APP, including the Approved Budget for the Contract (ABC), the Procuring Entity may proceed with the planned public bidding, and the implementation of the contract may go beyond six (6) months as long as the specified budget particularly earmarked for the project is obligated within the validity period to cover the subject matter of the procurement at hand.

Additional Terms of Reference (TOR)

The inclusion of identified parameters in the technical specifications on the quality of food to be procured and the evaluation thereof by BuCor or FNRI based on a set of criteria⁴ in the TOR is allowed. Section VII on Technical Specifications of the Philippine Bidding Documents for the Procurement of Goods⁵ provides that a set of precise and clear specifications is a prerequisite for bidders to respond realistically and competitively to the requirements of the PE without qualifying their bids.

It bears stressing though that the inclusion of the evaluation on the quality of food in the TOR is subject to the agreement by the FNRI to provide this service. In addition, it should be clarified whether BuCor or FNRI would develop the criteria to be implemented. Further, BuCor should also indicate the manner of evaluating the quality of food on whether it would require prospective bidders to submit food samples to FNRI for evaluation or BuCor would coordinate with FNRI for testing of the samples provided by the bidders.

In sum, we are of the opinion that (i) catering services fall under the category of Goods as defined under Section 5(r) of the IRR of RA 9184; (ii) the contract for catering services may be procured using the specified budget for 2012, which is presumed valid, even though the actual contract implementation exceeds six (6) months; and, (iii) the criteria to be formulated either by BuCor or FNRI, subject to further evaluation by BuCor or FNRI, may form part of the Technical Specifications of the Project.

² Section 1.1.1 of the IRR of Executive Order (EO) 662, as amended by EO 662-A.

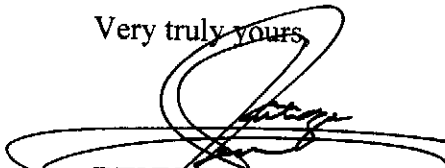
³ NPM No. 11-2006 dated 11 April 2006.

⁴ Total energy with respect to the Recommended Energy Nutrient Intake, carbohydrates, protein, fat and other micro-nutrients such as vitamins and minerals.

⁵ Issued on June 2006, page 99.

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

//LSD3 *DS*