

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

NPM No. 130-2014

17 November 2014

ARCH. JERRY C. MAGPAYO
Chairperson, Bids and Awards Committee
CITY GOVERNMENT OF NAVOTAS
1052 Mariano Naval Street, Navotas City 1485

Re: Outsourcing and Public-Private Partnership (PPP)


Dear Arch. Magpayo:

This refers to your letter seeking guidance on matters relative to the opening of the city government's public hospital, *to wit*:

1. Outsourcing and Public-Private Partnership on the following service centers of the hospital: laboratory, x-ray and ultrasound imaging, and pharmacy;
2. Confirmation as to whether the city government can undertake an ordering agreement, *i.e.* medicines and medical supplies to avoid pilferage, expiration and overstocking of medicines;
3. Purchase of medicines on consignment basis; and
4. Three-year contract for the consumables/collaterals of the equipment for PPP.

Outsourcing and PPP

On the proposed outsourcing and PPP arrangement for the laboratory, x-ray and ultrasound imaging, and pharmacy, we wish to inform you that the PPP regime is governed by Republic Act No. 6957, as amended by RA 7718, otherwise known as "*An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes*", or the Philippine BOT Law.

Under Executive Order No. 8, the PPP Center of the Philippines is mandated to cover all PPP programs and projects including all the variants or arrangements under the BOT Law, among others. As such, the PPP Center has the authority to conduct project facilitation and assistance to the national implementing agencies, including government corporations, and Local Government Units (LGUs) and provide advisory services, technical assistance, trainings and capacity development in PPP project preparation and development, which includes addressing impediments or bottlenecks in the implementation of PPP programs and projects, among others. For proper coordination, the city government may direct questions concerning the proposed outsourcing and PPP arrangement with the PPP Center. 

Ordering Agreement


Anent the second query, Ordering Agreement may be used by the city government for expendable or non-expendable goods, and services for hotel accommodation, air travel, and repair and maintenance, determined to be necessary and desirable to address and satisfy the city government's needs, but by its nature, use, or characteristic, the quantity and/or exact time of need cannot be accurately pre-determined. Since medicines and medical supplies are in the nature of expendable goods or supplies, the city government may use ordering agreement mechanism for their procurement. For proper guidance on the processes and procedures for the use of an ordering agreement, kindly refer to the *Revised Guidelines on the Use of Ordering Agreement (Guidelines)*.¹

Consignment of Medicines

The Project Procurement Management Plan (PPMP), which shall form part of the Annual Procurement Plan, of the concerned end-user unit shall include information on whether programs, activities and projects shall be consigned² or procured through competitive bidding or any of the alternative modalities of procurement.

For a *consignment* arrangement to be valid, the following requisites must be present: (a) delivery of goods by their owner (consignor), without sale, to a government agency (consignee); (b) consignee must try to sell the goods and remit the price of the sold goods to the consignor; (c) consignee accepts without any liability except for failure to reasonably protect them from damage; (d) no disbursement of government funds is involved; and (e) at terms not disadvantageous to the GOP. Accordingly, the city government may adopt a consignment system for medicines and medical supplies upon compliance with the above-mentioned requisites.

Contract for Three Years

As for the last inquiry, the legality of entering into a contract for a period of three (3) years will depend on the appropriations for the project as authorized by the *Sangguniang Lungsod* or the City Council in accordance with Section 319³ of RA 7160 or the Local Government Code (LGC) of 1991. As the legislative arm of the City, the *Sanggunian*, based on the budget proposal for the identified project, may pass an Appropriation Ordinance appropriating sufficient funds to cover the project cost or expenditure for a period of three (3) years thereby authorizing contract implementation on a multi-year basis pursuant to its corporate powers under Section 22 of the LGC and in accordance with the budgetary requirement under Section 324(b)⁴ of the LGC. 

¹ Issued through GPPB Resolution No. 01-2012, dated 27 January 2012.

² Section 7.3.2(a), IRR of RA 9184.

³ Section 319. *Legislative Authorization of Budget*. - On or before the end of the current fiscal year, the sanggunian concerned shall enact, through an ordinance, the annual budget of the local government unit for the ensuing fiscal year on the basis of the estimates of income and expenditures submitted by the local chief executive.

⁴ Section 324. *Budgetary Requirements*. - The budgets of local government units for any fiscal year shall comply with the following requirements:

...

(b) Full provision shall be made for all statutory and contractual obligations of the local government unit concerned: Provided, however, That the amount of appropriation for debt servicing shall not exceed twenty percent (20%) of the regular income of the local government unit concerned.

On the other hand, if the consumables or equipment collaterals are to be procured through ordering agreement, the contract duration cannot be for a period of three (3) years. Pursuant to Section 7.5 of the Guidelines, Ordering Agreements, including the Ordering Agreement List, shall be valid only for the period stated in the Bidding Documents which, **in no case shall exceed one (1) year** from the time the Ordering Agreement was entered into and executed by the parties, and shall not be extended beyond its lifetime.

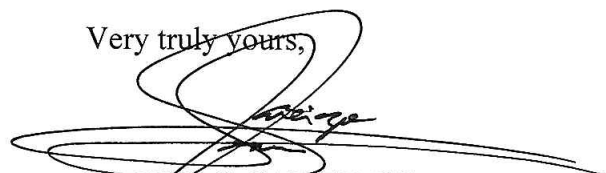
Summary

All told, it is the opinion of this office that:

1. The city government may direct questions concerning the proposed outsourcing and PPP arrangement with the PPP Center being the agency authorized to handle PPP programs and projects, including all variants and arrangements under the BOT Law;
2. Since medicines and medical supplies are in the nature of expendable goods or supplies, the city government may use ordering agreement mechanism for their procurement;
3. The city government may adopt a consignment system for medicines and medical supplies upon compliance with the requirements under Section 7.3.2 of the IRR of RA 9184;
4. The city government may enter into a three (3) - year contract for the equipment's consumables or collaterals, provided that there is an Appropriation Ordinance appropriating sufficient funds to cover the project cost or expenditure for a period of three (3) years;
5. However, if the consumables or equipment collaterals are to be procured through ordering agreement, the contract duration cannot be for a period of three (3) years, as the same shall be valid only for the period stated in the Bidding Documents which, in no case shall exceed one (1) year from the time the Ordering Agreement was entered into and executed by the parties, and shall not be extended beyond its lifetime.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director V