

NPM No. 131-2013

27 December 2013

MS. MA. CARINA M. CUNANAN
Assistant Chief of Office, Office of Administrative Services
Chairperson, Procurement Planning Committee
SUPREME COURT OF THE PHILIPPINES
Padre Faura Street, Ermita, Manila

Re : Multi-Agency Joint Procurement

Dear Ms. Cunanan:

We write in relation to your letter dated 23 October 2013 seeking guidance on whether the Constitutional Fiscal Autonomy Group (CFAG), composed of the Supreme Court, the Commission on Elections, the Civil Service Commission, the Commission on Audit, the Office of the Ombudsman, and the Commission on Human Rights, could jointly procure bullet-resistant vehicles for key officials of the CFAG.

As represented, CFAG discussed the security issues faced by its key officials in a meeting, and is now evaluating the necessity and feasibility of procuring bullet-resistant vehicles for its key officials. Its initial findings show that there will be substantial reduction in the procurement cost if the vehicles are bought in bulk instead of holding separate procurements by each of the member-offices. Hence, CFAG is contemplating of doing a joint procurement and bidding process, for which purpose, a special Bids and Awards Committee (BAC) composed of members from the CFAG member-offices will be created. The CFAG checked the guidelines on Negotiated Procurement (Agency-to-Agency) and Negotiated Procurement (Procurement Agent) but found them to be inadequate to address its concerns. It is in this context that you are seeking guidance on the validity of a multi-agency joint procurement, and the procedure that must be undertaken therefor.

We wish to note that Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) task the BAC to undertake the procurement function for the procuring entity. The BAC composition established in Section 11.2 of the IRR of RA 9184 requires that the members be permanent officials of the procuring entity, *i.e.*, those occupying *plantilla* position in the procuring entity. In this light, we explained in a previous opinion¹ that an officer from one procuring entity cannot be designated as BAC member in another procuring entity since the procurement rules limit the BAC composition to officials of the procuring entity.



¹ Non-Policy Matter No. 60-2012 dated 18 May 2012.

Based on this, the creation of a Special BAC composed of officials from various procuring entities will run counter to the provisions of RA 9184 and its IRR. Accordingly, we are of the view that the concept of a multi-agency joint procurement that will be conducted using a Special BAC composed of the agencies' respective officials does not find support in RA 9184 and its IRR.

For further guidance, while we note that the CFAG found the guidelines on the use of Negotiated Procurement (Procurement Agent) under Section 53.6 of the IRR of RA 9184 to be inadequate in addressing its concerns, we believe that such modality may be able to address the objective of attaining the advantages from bulk procurement. Under such alternative modality, the CFAG member-offices may select the same procurement agent that will undertake the procurement activity in accordance with the terms and conditions CFAG agreed to adopt. The CFAG may also agree with the procurement agent to assign its officials as part of the Technical Working Group that will assist the BAC of the procurement agent in the procurement activity in order to ensure that the views of CFAG member-offices are taken into consideration. Lastly, since the procurement agent merely conducts the procurement activity, each CFAG member-office has the authority to approve the award of contract that will be recommended by the BAC of the procurement agent, thereby maintaining the power to make the final decision on the process.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS LORNE S. NACARIO
Officer-in-Charge

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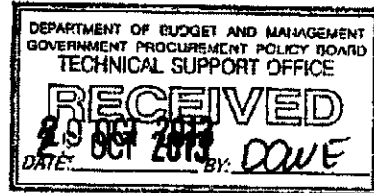


Republic of the Philippines
Supreme Court
Manila

PROCUREMENT PLANNING COMMITTEE

23 October 2013

ATTY. DENNIS S. SANTIAGO
Executive Director
Government Procurement Policy Board
Technical Support Office
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center, Pasig City



*Re: Joint procurement of vehicles by member-offices of the
Constitutional Fiscal Autonomy Group (CFAG)*

Dear Atty. Santiago:

In the recent meeting of the Constitutional Fiscal Autonomy Group – composed of the Supreme Court, the Commission on Elections, the Civil Service Commission, the Commission on Audit, the Office of the Ombudsman and the Commission on Human Rights – the heads of the member-offices discussed the security issues faced by its key officials.

You may be aware, for instance, that Ombudsman Conchita Carpio-Morales had been receiving death threats as a result of the recent high-profile investigations conducted by her office. Last year, a hand grenade was even found in front of her home. In September 2013, gunshots were fired at the Commission on Audit main office along Commonwealth Avenue.

In view of these serious security concerns, the CFAG members are evaluating the necessity and feasibility of procuring bullet-resistant vehicles for their key officials. Based on initial requests for information, it appears that there will be a substantial reduction in the procurement cost if the vehicles are bought in bulk. Thus, instead of holding separate procurements by each of the member-offices, CFAG is contemplating of doing a joint procurement and bidding process. A special Bids and Awards Committee

(BAC) will then have to be created and each CFAG member will be represented in the said BAC.

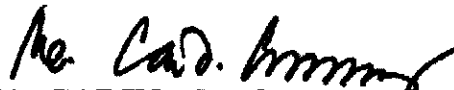
However, there is no specific provision in Republic Act No. 9184 and its implementing rules regarding a multi-agency joint procurement. We checked the guidelines on Agency-to-Agency procurement and Procurement Agency, but found these to be inadequate to address our concerns.

In this regard, we would like to seek guidance from your office on the following matters:

- The validity of a multi-agency joint procurement; and
- The procedure that must be undertaken to implement such joint procurement (e.g., will a memorandum of agreement among CFAG members regarding the joint procurement and the formation of a special multi-agency BAC suffice?)

We thank you for the assistance that you will provide us regarding this matter. Allow us also to also thank your office for the technical assistance (including trainings) that you have been continuously providing.

Very truly yours,



MA. CARINA M. CUNANAN

Assistant Chief of Office

Office of Administrative Services, and
Chairperson, Procurement Planning Committee
Supreme Court of the Philippines