

NPM No. 133-2015

27 November 2015

HON. HERMINIO C. BAGRO III
Undersecretary and Deputy Head
PRESIDENTIAL MANAGEMENT STAFF (PMS)
PMS Building, Arlegui Street,
San Miguel, City of Manila 1005

Re: Government Procurement Policy Board (GPPB) Resolution No. 03-2015

Dear Undersecretary Bagro:

This refers to the letter of the Honorable Undersecretary requesting our opinion on whether GPPB Resolution No. 03-2015¹, particularly the rules on the adjustment of Approved Budget for the Contract (ABC), applies to lease of office space following the termination of the previously awarded lease contract to a private entity.

A careful perusal of its provisions reveals that GPPB Resolution No. 03-2015 applies when the method of procurement resorted to by the Procuring Entity (PE) is either Competitive Bidding, Limited Source Bidding or Negotiated Procurement under Section 53.1 (Two-Failed Biddings) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 as the Resolution mentions Sections 35.2, 35.3 and 53.1 of the IRR of RA which refer to these methods of procurement. The cited provisions pertain to the mandatory review of terms, conditions and specifications of the Bidding Documents, including its cost estimates, and the adjustment of ABC. Pointedly, these provisions state that any adjustment of the ABC shall be subject to required approvals.

Similarly, for all other methods of procurement, any adjustment of the ABC shall also be subject to required approvals. This can be inferred from the provisions of Sections 7.2 and 7.4 of the IRR of RA 9184, thus:

“7.2. No procurement shall be undertaken unless it is in accordance with the approved APP of the Procuring Entity. The APP shall bear the approval of the Head of the Procuring Entity or second-ranking official designated by the Head of the Procuring Entity to act on his behalf, and must be consistent with its duly approved yearly budget.

7.4. Updating of the individual PPMPs and the consolidated APP for each procuring entity shall be undertaken every six (6) months or as often as may be required by the Head of the Procuring Entity. The updating of the PPMPs shall be the responsibility of the respective end-user units of the Procuring Entities, while the consolidation of these PPMPs into an APP shall be lodged with the BAC Secretariat, subject to approval of the Head of the Procuring Entity.”

¹ Dated 30 January 2015.

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The foregoing provisions set the parameters in the adjustment of ABC, in general, and apply to all methods of procurement. Thus, before undertaking any procurement project that requires adjustment of ABC, the following must first be observed:

1. The end-user unit shall update its Project Procurement Management Plan (PPMP) to reflect the desired adjustment of ABC in the particular procurement project;
2. The BAC Secretariat shall update the Annual Procurement Plan (APP) by incorporating therein the updated PPMP;
3. The updated APP shall be approved by the Head of the Procuring Entity (HOPE) or its designated second-ranking official; and
4. The adjusted ABC shall be consistent with the corresponding duly approved yearly budget.

Of important consideration as well are the rules pertaining to realignment of funds. Section 73 of the General Provisions of RA 10651 (the *Fiscal Year (FY) 2015 General Appropriations Act*) states the general rule that agencies and offices must spend what is programmed in their appropriations. Toward this end, the Department of Budget and Management (DBM) issued National Budget Circular (NBC) No. 559, dated 26 June 2015, prescribing the guidelines in the realignment of funds consistent with *FY 2015 GAA*. The guidelines provide the rules on reallocation, modification or change in the details within an existing Program/Activity/ Project (P/A/P) as well as the approving authorities and the timelines for realignment of funds. Thus, if the adjustment of ABC will entail realignment of funds, the provisions of NBC No. 559, in relation to FY 2015 GAA shall be complied with.

In this regard, it is our considered view that GPPB Resolution No. 03-2015 does not apply to the adjustment of ABC for lease of office space that will be undertaken through Negotiated Procurement under Section 53.10 of the IRR of RA 9184. This notwithstanding, any adjustment of ABC for any method of procurement shall be:

1. reflected in the updated PPMP and APP;
2. approved by the HOPE or its duly designated second-ranking official;
3. consistent with the approved yearly budget; and
4. comply with the provisions of NBC No. 559, in relation to FY 2015 GAA, when the adjustment will entail realignment of funds.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and 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

