



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

NPM No. 137-2013

27 December 2013

HON. ANTONIO A. FLETA
Undersecretary for Administration and Finance
DEPARTMENT OF AGRICULTURE (DA)
Elliptical Road, Diliman, Quezon City 1100

Re : Application of the Guidelines on NGO Participation

Dear Undersecretary Fleta:

We respond to the Honorable Undersecretary's letter dated 17 September 2013, seeking guidance on the proper interpretation of Sections 2 and 4 of the Guidelines on Non-Governmental Organization Participation in Public Procurement¹ (Guidelines) relative to the requirement for a specifically earmarked budget for projects to be contracted to Non-Governmental Organizations (NGOs), and whether the DA needs to apply the Guidelines in the selection of NGOs to undertake Priority Development Assistance Fund (PDAF) Projects endorsed to DA.

As represented, the DA has partnered with several NGOs in the pursuit of its mandate. These NGOs undertake specific tasks as part of some of the programs of the DA where the particular NGOs have expertise, and the DA has no capability to perform. The budgets of these programs do not indicate that they shall be specifically contracted out to NGOs and are not specifically earmarked for projects to be contracted out to NGOs. Because of the conflicting interpretations on the matter, the DA has decided to put on hold the implementation of various programs, the result of which may adversely affect the DA's performance as an executive agency. It is in this context that guidance or clarification on the above-mentioned matters is being raised.

Scope and Application of the Guidelines

At the outset, we wish to emphasize that Section 10 of Republic Act No. (RA) 9184 states that all procurement shall be done through competitive bidding, except as provided for in Article XVI thereof, in which case, alternative methods of procurement may be resorted to in highly exceptional cases where it will to promote economy and efficiency. Among the alternative methods of procurement recognized in RA 9184 and its revised Implementing Rules and Regulations (IRR) is Negotiated Procurement. Under Section 53.11 of the IRR of RA 9184, procuring entities may use Negotiated Procurement

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¹ Issued by the Government Procurement Policy Board (GPPB) through GPPB Resolution No. 12-2007 dated 29 June 2007.

when an appropriation law or ordinance earmarks an amount to be specifically contracted out to NGOs, subject to the Guidelines.

The Guidelines was issued in line with Section 23, Article II of the Philippine Constitution, which prescribes that the State shall encourage the participation of NGOs, community-based, or sectoral organization in the promotion of the welfare of the nation. It reiterates the general rule that all procurement shall be done through competitive bidding, but recognizes that when an appropriation law earmarks an amount for projects to be specifically contracted out to NGOs it is the intent of Congress to give due preference to NGOs.

Sections 2 and 4.1 of the Guidelines explicitly state that the Guidelines prescribe the allowable modes of selecting NGOs in case an appropriation law or ordinance earmarks an amount for projects to be specifically contracted out to NGOs, which may be through Public Bidding or Negotiated Procurement, following the rules for each modality provided in Sections 5 and 6 of the Guidelines, respectively.

Basic is the rule in statutory construction that when the law is clear and unambiguous, there is no alternative but to apply the same according to its clear language. Accordingly, when there is no appropriation law or ordinance that earmarks an amount for projects to be specifically contracted out to NGOs, procuring entities cannot resort to Negotiated Procurement (NGO Participation) and use the Guidelines for the selection of the supplier, contractor, or consultant that will perform the project.

In this regard, we wish to clarify that DA cannot apply the Guidelines in the selection of NGOs to carry out its projects when the budgets for these programs are not earmarked specifically to be contracted out to NGOs. Differently stated, the DA cannot limit its selection process to NGOs when the same condition for a specifically earmarked budget is wanting. In this case, the general rule on public or competitive bidding provided in Section 10 of RA 9184 and its IRR will apply, and the selection of the supplier, contractor, or consultant for the project shall be open to all entities allowed under Sections 23 and 24 of the same law and rules.

Agency Required to Apply the Guidelines

Anent your second query, please note that Section 4 of RA 9184 and its IRR provide that it shall apply to the procurement of infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government. The processes, rules, and procedures provided in RA 9184, its IRR, and associated issuances are to be complied with and implemented by the government agency that seeks to acquire a contract for goods, infrastructure projects, or consulting services; in which case, the government agency is considered the procuring entity.

In this regard, the government agency, whether the DA or the legislator from whom the funds originate, that is considered as the procuring entity for projects covered by PDAF shall be required to apply the provisions of RA 9184, its IRR, and associated issuances in conducting the procurement activity. For further guidance, the procuring entity is usually the government agency/entity from where the budget for the procurement



activity is sourced, or the one entering into contract for the item/service procured, or the one that has the obligation to account for the expenditure.

Based on all the foregoing, we wish to clarify that the DA is required to apply the provisions of the Guidelines in the selection of NGOs to undertake PDAF endorsed by legislators if it is considered the procuring entity for the project that is funded through an earmarked amount that will be specifically contracted out to NGOs provided in an appropriation law or ordinance. Consequently, if it is not the procuring entity, and is merely a beneficiary or recipient of the contract that is funded by PDAF, it is not the DA that is required to apply the provisions of the Guidelines.

In relation to this, we wish to note that in the recent case of Greco Antonious Beda B. Belgica vs. Hon. Executive Secretary Paquito n. Ochoa, Jr.², the Supreme Court declared PDAF as unconstitutional, and permanently enjoined the disbursement/release of such funds allocated for the year 2013, as well as for previous years.

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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² G.R. No. 208566 dated 19 November 2013.