

**NPM No. 137-2015**

27 November 2015

**MR. GILBERTO M. LLANTO**

*President*

**PHILIPPINE INSTITUTE FOR DEVELOPMENT STUDIES (PIDS)**

NEDA sa Makati Building

106 Amorsolo Street, Legaspi Village,

Makati City

**Re: Agency-to-Agency Agreement**

Dear Mr. Llanto:

This refers to your letter seeking guidance on how to proceed with the engagement of the Philippine Statistical Authority (PSA) through the Agency-to-Agency procurement where the Approved Budget for the Contract (ABC) is more than the allowed 25% limit provided in the Implementing Guidelines on Agency-to-Agency Agreements (Guidelines)<sup>1</sup>.

It is represented that the PIDS will conduct a study entitled, "*Measuring and Examining Innovation in Philippine Business and Industry*", which is one of the studies under PIDS' flagship project, Impact Evaluation of Key Government Programs and Projects and Capacity Building of Oversight Agencies on Impact Evaluation. A key component of the study is the conduct of a nationally representative sample survey of seven thousand (7,000) establishments and enterprises to measure innovative performance of economic actors across all major sectors of the economy. For the conduct of this survey, PIDS plans to engage the services of the PSA through an Agency-to-Agency Agreement because it has the strongest capacity to conduct the survey. However, the ABC, in the amount of Twenty-Eight Million Pesos (P28,000,000.00), exceeds 25% of the procuring entity's total procurement budget for consulting services of Ninety Million Nine Hundred Ninety-Four Thousand Two Hundred Eighty-Three Pesos (PhP 90,994,283.00) for 2015.

In this regard, our guidance is being sought as to the following:

- (1) The manner by which PIDS can proceed with the Agency-to-Agency Agreement with PSA; and
- (2) Whether PIDS can provide a justification for the use of the Agency-to-Agency modality for the procurement of consultancy services with PSA.

<sup>1</sup> Issued through GPPB Resolution No. 018-2007 dated 31 May 2007.

*[Handwritten signature]*

We wish to stress that the Government Procurement Policy Board (GPPB) issued the Guidelines to prescribe the conditions when a government agency may procure from another government agency without need of public bidding pursuant to Negotiated Procurement under Section 53.5 (Agency-to-Agency Agreements) of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

The use of such modality is subject to the following conditions and/or requirements:

1. Conduct of a Cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
2. Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity's total procurement budget for each category (i.e., goods, infrastructure, or consulting) as reflected in its approved APP;
3. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and
4. Servicing Agency owns or has access to the necessary tools and equipment required for the project<sup>2</sup>.

It is the general policy of government to purchase its requirements from the private sector and only in highly exceptional cases may one government agency procure from another government agency when it is determined to be more efficient and economical.

Bearing this in mind, the GPPB opted to place a 25% cap in the respective budgets for each procurement category of government agencies under Paragraph 5(a)(ii) of the Guidelines. The condition is intended to discourage government agencies from adopting Agency-to-Agency arrangements as the general rule in procurement transactions.<sup>3</sup>

The only time that said requirements may be dispensed with is when the procurement is governed by other specific laws or rules such as: the infrastructure projects undertaken through the Armed Forces of the Philippines Corps of Engineers (AFPCOE) governed by the Guidelines on Implementation of Infrastructure Projects Undertaken by the AFP Corps of Engineers under GPPB Resolution No. 09-2005; the procurement of Common-Use Supplies for the GOP from the Procurement Service-Department of Budget and Management (PS-DBM) in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989; and the procurement for the printing of Accountable Forms and Sensitive High Quality/Volume Requirements undertaken by recognized government printers under GPPB Resolution No. 04-2011.

In this regard, we are of the view that the 25% limitation cannot be dispensed with unless there is another law or rules that govern such procurement. As of this writing, this office is not aware of any other justification for the use of such modality under the 1<sup>st</sup> paragraph of Section 53.5.

---

<sup>2</sup> Section 5(a) of the Guidelines.

<sup>3</sup> NPM 37-2008, 07 October 2008.

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*

//rd4

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*

//rd4