



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

NPM No. 138-2013

27 December 2013

HON. ROLANDO G. TUNGPALAN

Deputy Director General

NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA)

NEDA sa Pasig, 12 Saint Josemaria Escriva Drive,
Ortigas Center, Pasig City

Re : Interpretation of Mixed Procurement

Dear Deputy Director General Tungpalan:

We write in response to the Honorable Deputy Director General's letter dated 26 September 2013, seeking the interpretation of the Government Procurement Policy Board (GPPB) as to whether the Agus 6 Hydroelectric Power Plant (Units 1 and 2) Upgrading Project (Project) of the Power Sector Assets and Liabilities Management Corporation (PSALM) is considered a procurement of infrastructure project or procurement of goods under Republic Act No. (RA) 9184.

As represented, the inquiry refers to the 6 September 2013 letter from PSALM responding to the queries on the Project submitted by a prospective bidder, Philippine Hydro Project, Inc. One of the issues raised by PHP relates to the nature of the Project, *i.e.*, whether the Project involves the procurement of an infrastructure project or procurement of goods under RA 9184. Based on its observation of the scope of works described in the Bidding Documents for the Project, NEDA is of the view that the Project involves mainly procurement and installation of equipment, supported by its findings that about 99.80% of the major work items for the upgrading Project involves the supply of equipment, testing, and commissioning. It is in this context that NEDA is seeking the interpretation of the GPPB on the proper categorization of the procurement of the Project.

The GPPB discussed and deliberated on the matter in its meeting held on 25 October 2013, and after a thorough discussion and due consideration of the recommendations of its Inter Agency Technical Working Group resolved as follows:

1. Clarify that in case of projects involving mixed procurements, the nature of procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract; and
2. Direct the GPPB-TSO to respond to NEDA's query through the issuance of a Non Policy Matter Opinion reiterating the position of the GPPB.

At


The GPPB noted that Section 5(aa) of the revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184 states that “in case of projects involving mixed procurements, the nature of the procurement, *i.e.*, goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract.” In addition, the GPPB recognized that the procuring entity is in the best position to determine the correct classification of its procurement based on its identified needs and the best way by which these needs may be addressed, managed, and satisfied.

The Board likewise agreed to the position that the procuring entity should be guided by the parameters and conditions in the relevant provisions of RA 9184 and its IRR on what should be considered goods, infrastructure project, or consulting services procurement. In this wise, procuring entities are deemed to have the capability, and the concomitant accountability, in discerning whether its procurement may be considered goods, infrastructure project, or consulting services based on the definitions provided in RA 9184 and its IRR.

Based on the foregoing, it is the position of the GPPB that the nature of a mixed procurement shall be determined by the procuring entity based on their identified primary purpose of the contract.

We hope that this opinion issued by the GPPB-TSO, which reiterates the position of the GPPB, 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 LORNE S. NACARIO
Officer-in-Charge