



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

NPM No. 142-2014

10 December 2014

MR. NELSO C. BAER, RA

Chairman of the Board of Directors

B.E. DUJALI MUNICIPAL OFFICIALS AND EMPLOYEES

MULTI-PURPOSE COOPERATIVE (BEDMOE-MPC)

2nd Floor, Municipal Hall Building, Dujali,

Braulio E. Dujali, Davao del Norte

Re: Government Employees' Cooperative

Dear Mr. Baer:

This refers to your letter requesting for clarification on the following matters:

1. Whether there is a provision in the Procurement Law that prohibits government employees cooperative to participate in the procurement process;
2. Whether there is really a conflict of interest on the part of government employees' cooperative to do business with government agency or LGU; and
3. Why most of the government employees' cooperatives are doing business with government agencies or LGUs.

It is represented that BEDMOE-MPC is a primary cooperative that exists and operates under Republic Act (RA) No. 9520, otherwise known as the Cooperative Code of the Philippines of 2008. It is also represented that in the past years, BEDMOE-MPC has been in business with the LGU by providing goods and services. However, when there has been a change in the Bids and Awards Committee (BAC) of the concerned LGU in the middle of CY 2013, all business transactions of BEDMOE-MPC with the LGU ceased due to conflict of interest since the BAC members are also officials and members of the cooperative. For this reason, the cooperative directors, who were likewise BAC members, relinquished their BAC posts. Nonetheless, BEDMOE-MPC was still not allowed to participate in the procurement activities of the LGU because some BAC members are still active cooperative members. Hence, this inquiry.

Prohibition against Government Employees' Cooperatives

In general, government employees' cooperatives are allowed to participate in the procurement opportunities of government subject to compliance with the eligibility criteria and the technical and financial requirements set by the Procuring Entity (PE).

The IRR of RA 9184 enumerates the eligible persons and entities who could participate in the bidding projects of the government, instead of stating those who are prohibited. Specifically, cooperatives duly organized under the laws of the Philippines, and of which at least sixty (60%) belongs to citizen of the Philippines, can participate in the bidding for goods and consulting services.¹ For infrastructure projects, the percentage of Filipino ownership shall be seventy-five (75%).²

However, by way of exception, the Government Procurement Policy Board, in several meetings³ on the matter, is of the view that *employees' cooperatives should be disqualified from participating in the procurement within their agencies*⁴ as it poses undue advantage in terms of access to information, which are generally not available to outside bidders. The position of the Board is anchored on the provisions of the Generic Procurement Manual (GPM)⁵ and the Philippine Bidding Documents (PBDs)⁶, which considers the existence of general conflict of interest if a bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another bidder or influence the decisions of the PE regarding the bidding process.

This notwithstanding, employees' cooperatives may join procurement activities of other government entities, subject to prohibition against conflict of interest in the GPM and PBDs and the disclosure provision under Section 47⁷ of the IRR of RA 9184. At this juncture, we wish to clarify that the determination of the existence of a conflict of interest is essentially and primarily lodged with the BAC of the PE.⁸

Conflict of Interest under RA 6713

Apart from the provisions of RA 9184 and its associated rules and regulations, RA 6713 or the *Code of Conduct and Ethical Standards for Public Officials and Employees* provides a general definition of conflict of interest in all government transaction. Section 3(i) thereof provides that:

Conflict of interest arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

Under the cited provision of law, a public official or employee who is a board member, officer or substantial owner of a cooperative possesses a conflict of interest in case the interest of such cooperative may be opposed to or affected by the faithful performance of

¹ Sections 23.5.1.1(d) and 24.3.1(d) of the IRR of RA 9184.

² Section 23.5.2.1(d) of the IRR of RA 9184.

³ 2nd GPPB Regular Meeting dated 25 February 2011 and 6th GPPPB Meeting dated 29 June 2012.

⁴ The rule apply in central and branches or regional offices, and to the attached agencies, departments and bureaus of the government.

⁵ Volume I, p.64.

⁶ Clause 4.1(d) of the Instruction to Bidders (ITB) of the PBDs for the Procurement of Goods and Infrastructure Projects.

⁷ All bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity, members of the BAC, the TWG, and the BAC Secretariat, the head of the PMO or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree.

⁸ NPM No. 34-2009 dated 14 July 2009.

his official duty. Thus, there exists a conflict of interest when a cooperative participates in a procurement activity of any government entity where a public official or employee who is involved in the procurement process is at the same time a board member, officer or substantial owner of that cooperative.

In order to prevent conflict of interest under RA 6713, the concerned public official or employee shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.⁹ It shall be incumbent upon any government official or employee to avoid conflict of interest at all times.¹⁰

Summary

In sum, we wish to clarify the following matters relative to your concerns:

1. Government employees' cooperatives can participate in procurement opportunities of government, except in their own agencies, provided that they meet all the requirements prescribed under the IRR of RA 9184;
2. Under GPM Volume I and ITB Clause 4.1(d) of the PBDs for the Procurement of Goods and Infrastructure Projects, a bidder shall be disqualified to participate in the procurement when there exists a conflict of interest, such as when it has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder or influence the decisions of the Procuring Entity regarding this bidding process; and
3. The presence of conflict of interest on the part of the government employees' cooperative doing business with the government shall be determined based on the surrounding circumstances, such as when a public official or employee who is involved in the procurement process is at the same time a board member, officer or substantial owner of that cooperative.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being 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

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⁹ Section 9 of RA 6713.

¹⁰ *Ibid.*