

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44

NPM No. 147-2004

November 25, 2004

MS. LIVIA ALICIA R. RAMOS
Vice President
Government Service Insurance System
Investment Office
Financial Center, Pasay City, 1308

Re : Procurement for Third Party Securities Custodianship

Dear Ms. Ramos:

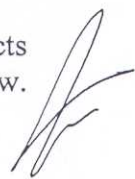
This has reference to your letter, dated 29 October 2004, requesting for clarification on the mode of procurement to be followed in the selection of a third party securities custodian. The issue raised in the said letter was the subject of a phone discussion¹ initiated by this office in view of immediately responding to the query brought before us for our disposal. However, written opinion is requested and, hence, this further discourse.

As represented in the aforementioned letter, to date, there are only six (6) securities custodians accredited by the Bangko Sentral ng Pilipinas (BSP) from which GSIS may select its custodian. Thus, the following issue:

Whether or not the selection for third party securities custodian should pass through the bidding process.

General Rule on Competitive Bidding under Republic Act No. 9184 and its Implementing Rules and Regulations Part A

It is now an established policy under R.A. 9184 and its IRR-A that all Government contracts shall be awarded through open and competitive bidding save in exceptional cases provided by law. Section 10 of R.A. 9184 is explicit:



¹ With Ms. Au Kerry of GSIS Investment Office; on November 18, 2004

All procurement shall be done through competitive bidding, except as provided for in Article XVI (Alternative Methods of Procurement) of this Act.”

This is further amplified by Section 48. 2 of the IRR-A, which provides as follows:

In accordance with Section 10 of this IRR-A, as a general rule, the procuring entities shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. **Alternative methods shall be resorted to only in the highly exceptional cases provided for in this Rule.** (Emphasis supplied).

Based on the foregoing provisions, it is clear that R.A. 9184 and its IRR-A prescribe public bidding as the general mode that shall be used by Government agencies in the procurement of goods, services or infrastructure projects, and resort to the alternative methods of procurement is allowed only in highly exceptional cases set forth in Sections 48-54 of R.A. 9184 and its IRR-A² and upon compliance with the rigid conditions set forth by law.

Taking into consideration the established policy of R.A. 9184, and its IRR-A prescribing competitive bidding as the general method of procurement, the provisions of law providing for alternative methods, which are but exceptions to the general rule, must be strictly construed. It must be noted that the rationale behind the general rule on competitive bidding transcends practicality and convenience. Its objective is to protect the public interest by giving the public the best possible advantages through open competition,³ and aims to obtain the best possible deal by fostering transparency, thereby preventing favoritism, collusion and fraud in the award of contracts.⁴ It therefore precludes suspicion of favoritism and anomalies in the execution of public contracts.⁵ In other words, competitive bidding is still the only method of procurement so far invented by man by which the government could reasonably expect to keep relatively honest those who would contract with it.⁶ Accordingly, resort to the alternative methods must be exercised with utmost prudence and judiciousness and only under highly extraordinary circumstances.⁷

Strict Legal Requirements for Limited Source Bidding

Under Section 49 of R.A. 9184 and its IRR-A, Limited Source Bidding may be resorted to only under these circumstances:

- a) Procurement of highly specialized types of goods (e.g. sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely

² Section 10 of R.A. 9184 and its IRR-A; Section 48.2 of the IRR-A of R.A. 9184.

³ Garcia vs. Burgos, 291 SCRA 546.

⁴ Agan, et al., vs. PIATCO, et al., G.R. No. 155001, May 5, 2003.

⁵ COA vs. RTC National Capital Judicial Region et al., G.R. No. 85285, July 7, 1989.

⁶ Supra footnote 4.

⁷ Section 48.2 of the IRR-A of R.A. 9184.

result in any additional suppliers or consultants participating in the bidding;
or

- b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole

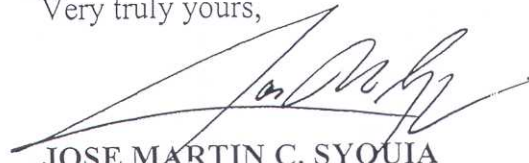
Evidently, under the aforementioned provision, securities custodianship does not fall under any of the foregoing circumstances. Such type of service cannot be classified as highly specialized goods, considering that the same can be offered by a number of banking institutions – albeit accreditation is required -- and is not a practice exclusively enjoyed by a few. While, to date, there are only six (6) accredited banks for securities custodianship, the same does not sufficiently justify resort to Limited Source Bidding.

Moreover, there is no existing list of pre-selected suppliers submitted to, maintained and updated by the Government Procurement Policy Board from which direct invitation may be based.

This opinion is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it would be disclosed that the facts are different from the afore-stated representations and assumptions, then this opinion may no longer be applicable.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

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GOVERNMENT PROCUREMENT POLICY BOARD
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November 3, 2004

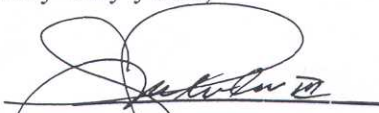
MS. LIVIA ALICIA R. RAMOS
Vice President
Government Service Insurance System
Investment Office
Financial Center, Pasay City,
Metro Manila 1308

Dear Ms. Ramos:

This refers to your letter dated October 29, 2004, which we received on November 2, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on the mode of procurement to be followed in the selection of a third party custodian for your agency.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group