

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 015-2004

February 18, 2004

ATTY. MA. CIELO MARTINEZ
City Legal Officer
City of Tacloban

Re: Posting at the G-EPS Website and the Exemption of Cooperatives from compliance with the Eligibility Requirements

Dear Atty. Martinez:

This refers to your letter dated January 28, 2004, which was received through e-mail at the Procurement Service and forwarded to our office for appropriate action. Based on your letter, the following issues were submitted for resolution, to wit:

1. Whether or not there is a price limit for items that should be posted at the G-EPS;
 - a. Whether or not posting is required even if the item to be purchased is less than P 1,000.00;
 - b. If there is a limit, would the amount be per purchase request (meaning the aggregate amount of all items listed in the PR) or per item;
2. Whether or not cooperatives participating in the bidding are exempt from pre-qualification/eligibility check;
3. Whether or not the local government unit may resort to negotiated procurement under Section 53 (e) of R.A. 9184.

Posting at the Government Electronic Procurement System (G-EPS)

At the outset, it must be stressed that posting of the Invitation to Apply for Eligibility and to Bid at the G-EPS is mandatory whether the procurement is being conducted by way of competitive bidding or through any of the alternative methods allowed under Rule XVI of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"). Additionally, it must be noted that posting at the G-EPS is not couched or dependent on the value of the contract/project being procured, such that regardless of the amount of the approved budget for the contract ("ABC"), posting is mandatory. These acceptations are clear from the wordings of Section 21.2.1 (b), to wit:



Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

xxx

xxx

xxx

b) **Posted continuously in** the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and **the G-EPS** during the maximum period of fourteen (14) calendar days stated above; xxx (Emphasis supplied)

Section 21.2.3 is also clear on the posting requirement, to wit:

Section 21.2.3. For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of infrastructure projects, the **Invitation to Apply for Eligibility and to Bid shall be posted at least in** the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, **the G-EPS**, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. For projects/contracts for consulting services with an ABC costing one million pesos (P1,000,000.00) and below and/or those whose duration is four (4) months or less, **the Invitation to Apply for Eligibility and to Bid shall be posted at least in** the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, **the G-EPS**, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

Section 21.2.4 is likewise emphatic on the posting requirement in the case of alternative methods of procurement, to wit:

Section 21.2.4. For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with: *Provided, however, That posting shall be made in* the website of the procuring entity concerned, if available, the **G-EPS**, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. (Emphasis supplied)

Looking at the above-quoted provisions, it can be readily seen that Section 21.2.1 (b) does not provide for a price ceiling or floor, the same is also true with Section 21.2.4. If at all, only Section 21.2.3 provides for a limitation with respect to the ABC. Be that as it may, whether the bid is more or less than the indicated thresholds, posting at the G-EPS is still necessary. As such, whether the ABC is above or below Two Million Pesos (Php

2,000,000.00) for goods, Five Million Pesos (Php 5,000,000.00) for works and One Million Pesos (Php 1,000,000.00) for procurement of consulting services, the invitation to apply for eligibility and to bid should be posted at the G-EPS. This is also true with the procurements conducted by way of alternative method as sanctioned by Section 21.2.4.

Exemption of Cooperatives in the Eligibility Check

The 1987 Constitution gives high premium to the indispensable role of the private sector in nation building. Specifically, Section 20, Article II provides that "The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investment". Hence, consistent with the government's efforts of fostering a healthy partnership between the Government and the private sector in furthering national development, the role which cooperatives play was further highlighted with the enactment of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines. To achieve its end, the Government vigilantly laid down in its declaration of policies the mandate of the Cooperative Code. Article 2 of the Cooperative Code states that:

Declaration of Policy. - It is the declared policy of the State to foster the creation and growth of cooperatives as a practical vehicle for prompting self-reliance and harnessing people power towards the attainment of economic development and social justice. The State shall encourage the private sector to undertake the actual formation and organization of cooperatives and shall create an atmosphere that is conducive to the growth and development of these cooperatives.

Towards this end, **the Government** and all its branches, subdivisions, instrumentalities and agencies **shall ensure the provision of technical guidance, financial assistance and other services to enable said cooperatives to develop into viable and responsive economic enterprises and thereby bring about a strong cooperative movement that is free from any conditions that might infringe upon the autonomy or organizational integrity of cooperatives.** (Emphasis supplied).

Pursuant to the above-quoted provision, cooperatives are provided with flexible exercise of its powers and functions inherent to its formation. The State recognizes the "principle of self-reliance" under which the cooperative sector will initiate and regulate within its own ranks the promotion and organization, training and research, audit and support services relating to cooperatives with government assistance whenever necessary.

The need to enhance the growth and further development of cooperatives is never forgotten, as a matter of fact, the General Appropriations Act ("GAA") of 2003 which was re-enacted as the GAA for 2004, provides premium to cooperatives specifically in the procurement of desks, furniture and equipment made by the Department of Education ("DepEd"), Section 14, Article VII of the GAA for 2004 provides:

x x x PROVIDED, FURTHERMORE, That twenty-five percent (25%) of the amount released shall be set aside for the purchase of desks, furniture and equipment, manufactured and fabricated by cooperatives: PROVIDED, FINALLY, That ten percent (10%) out of this twenty five percent (25%) shall be allocated to cooperatives of persons with disabilities and the remaining fifteen percent (15%) to other types of cooperatives.



It is clear from the said proviso that cooperatives engaged in the fabrication and manufacturing of school desks, furniture and equipment are given special attention and provided a specific budget allocation without any reservation. Another privilege granted to cooperatives that cannot be overlooked is its exemption from pre-qualification bidding requirements mandated by no less than its enabling law. Section 63(9), R.A. 6938 provides:

(9) Cooperatives transacting business with the Government of the Philippines or any of its political subdivision or any of its agencies or instrumentalities, including government-owned and controlled corporations shall be **exempt from pre-qualification bidding requirements**; (Emphasis supplied).

The pre-qualification bidding requirement which was sanctioned under Presidential Decree 1594 ("P.D. 1594") is understood to mean as the selective process wherein only those contractors who possess the capabilities to undertake and perform infrastructure or construction projects will be allowed to participate in the bidding to be conducted for the purpose (Fernandez, Jr. 2001: p. 73). It must be noted, however, that this pre-qualification requirement has already been modified and simplified under R.A. 9184 and its IRR-A.

The concept of "pre-qualification" has been modified to a simpler procedure known as the "simple eligibility check," which utilizes an objective and non-discretionary pass or fail criteria in the examination of the eligibility documents submitted by the bidder. Be that as it may, the import and tenor is the same. As in pre-qualification, only bidders declared eligible are allowed to submit bids, a situation side-stepped by R.A. 6938, specifically Section 63(9), to pave the way for the growth and development of cooperatives in the Philippines.

To stress the point, notwithstanding the change, the concept of pre-qualification under P.D. 1594 or the simple eligibility check under R.A. 9184 are both restrictive in the sense that only those prospective bidders who are able to comply with the rigid requirements of the pre-qualification/eligibility check will be allowed to participate. The restrictive nature of both the pre-qualification requirement and the simple eligibility check was certainly inconsistent with the thrust of promoting the cooperative's participation in the bidding process.

In the present state of things, the legislative intent of granting cooperatives the privilege of being exempt from the rigid requirements of pre-qualification or simple eligibility check to our mind, still stands. The spirit of Section 63(9), R.A. 6938 that giveth life to cooperatives should still be countenanced and the change in procedural nomenclature from pre-qualification to simple eligibility check, which seemingly killeth, should be reconciled with the noble intention of enabling cooperatives to develop into a viable and responsive economic enterprise, thereby bringing about a strong cooperative movement that is free from any condition that might infringe upon its autonomy and organizational integrity.

Negotiated Procurement

As a rule, procuring entities must procure by way of competitive and public bidding. The use of any of the alternative methods of procurement may be allowed only in instances provided by law and after all the conditions stated therein concur. Section 48.2 of the IRR-A of R.A. 9184 provides for the legal basis, to wit:

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.

However, as specifically allowed under Section 53 (e) of the IRR-A of R.A. 9184, procurement outsourcing may be resorted to under the following conditions:

e) Purchase of goods from another agency of the Government, such as the PS-DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order no. 359, series of 1989. Further, in order to hasten project implementation, agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by the head of the procuring entity concerned, may request other agencies to undertake such procurement for them, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function.

By reason of the above-cited provision, the City of Tacloban may specifically seek the help of another government agency to procure for and in its behalf, subject only to such requirements as may be provided by law. It must be borne in mind, however, that procurement outsourcing should not veer away from the concept of competitive bidding, in that, the agency procuring for the City of Tacloban, should consider procurement of the requested goods, services, infrastructure project or consulting services, as the case may be, by way of competitive bidding. Option as to the use of any alternative method should always be considered as a last recourse in order not to defeat the purpose of competitive bidding.

Emphasis must be made at this juncture that the concept of outsourcing simply involves a situation where a procuring entity, having no knowledge, proficiency or experience in the procedures relating to public procurement, seeks the help of another government agency to handle its procurement. In this eventuality, the requesting entity may always require the agency with which the procurement is being outsourced to procure by way of competitive bidding.

Anent all the foregoing, it is hoped that all your concerns were sufficiently addressed.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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