

NPM No. 172-2015

29 December 2015

MS. MAURA M. BAGHARI-REGIS

*Assistant Postmaster General,
Administration and Finance*

PHILIPPINE POSTAL CORPORATION (PHLPOST)

3rd Floor, Central Office Building, Liwasang Bonifacio,
Ermita, 1000 Manila

Re: Agency-to-Agency Agreements

Dear Ms. Baghari-Regis:

This refers to your letter dated 2 December 2015¹ seeking clarification on Agency-to-Agency (A-to-A) Agreements under Section 53.5 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, PHLPost entered into a Joint Venture Agreement (JVA)² with a private-sector partner, Filmetrics Corporation (Filmetrics), in accordance with the 2008 National Economic and Development Authority (NEDA) JV Guidelines, for the provision of a comprehensive and integrated Biometric Data Service Facility (BDSF). PHLPost intends to enter into an A-to-A agreement as a servicing agency with Philippine Health Insurance Corporation (PHIC) for the printing of PHIC's ID cards. In the proposed agreement, PHLPost will pass on to Filmetrics, the actual task of printing of PHIC's ID cards. However, the printing of ID cards under the BDSF is not covered by the JVA between PHLPost and Filmetrics. It is in this context that the following issues are raised:

1. Does the act of PHLPost in having its JV partner undertake the printing of the PHIC cards negate the A-to-A nature of the proposed Memorandum of Agreement (MOA) between PHLPost and PHIC, considering that the participation of the JV partner is not mentioned in the said MOA and considering that the JV partner is a private entity?
2. Is the arrangement where the private JV partner will undertake the printing of PHIC IDs, in consideration of the financial sharing on the fees to be paid by PHIC to PHLPost, constitute procurement of service as contemplated under RA 9184? If so, will PHLPost be giving undue advantage to its JV partner by having the latter to undertake the printing of PHIC ID cards without the usual competitive bidding process required by RA 9184?

¹ Received on 4 December 2015.

² Note that page 5 of the JVA is not included in the documents submitted to the GPPB-TSO, which provides for the "Purpose, Term and Scope, and Specifications and Features of the BDSF" per the Table of Contents.

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Negotiated Procurement under Section 53.5 (Agency-to-Agency)

In accordance with Section 10 of R.A. 9184, the procuring entity shall, as a general rule, adopt public bidding as a mode of procurement. However, in order to promote efficiency and economy, the procuring entity may resort to any alternative mode of procurement, subject to the approval of the head of the procuring entity, whenever justified by the conditions provided for under the law and the rules.

For your guidance, in cases where procurement from another agency of the government is more efficient and economical, Negotiated Procurement under Section 53.5 (Agency-to-Agency Agreements) of the IRR of RA 9184 may be resorted to. This rule allows a government entity to procure from another government entity without need of public bidding, subject to compliance with the prescribed conditions and procedures under existing rules and the Guidelines on Agency-to-Agency Agreements³ (Guidelines).

Pursuant to Section 5(a) of the Guidelines, A-to-A Agreements may only be resorted to if the following conditions are complied with:

- i. 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;
- ii. 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;
- iii. **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**
- iv. Servicing Agency owns or has access to the necessary tools and equipment required for the project. (Emphasis supplied)

We wish to note, however, that PHLPost's responsibilities and functions under Section 5 of RA 7354⁴:

- a) to provide for the collection, handling, transportation, delivery, forwarding, returning and holding of mails, parcels, and like materials throughout the Philippines and,
- b) pursuant to agreements entered into, to and from foreign countries;
- c) to determine and dispose of, in a manner it deems most advantageous, with law and settled jurisprudence, confiscated or non-mailable mail matters, prohibited articles, dead letters and undelivered mails, except the sale of prohibited drugs, dangerous materials, and other banned articles as defined by law;

³ Issued through GPPB Resolution 18-2007 dated 31 May 2007.

⁴ Postal Service Act of 1992.

d) to plan, develop, promote, operate a nationwide postal system with a network that extends or makes available, at least ordinary mail service, to any settlements in the country.

As stated in its own official website⁵, PHLPost is mandated to plan, develop, promote and operate a nationwide postal system with a network that extends or makes available, at least ordinary mail service, to any settlement in the country. It shall also provide for the collection, handling, transportation, delivery, forwarding and exchange of postal matters between nations.

Accordingly, unless PHLPost is able to lawfully provide the basis(es) to provide “printing services” as part of its legislative mandate, it may be gainfully said that “printing services” is not part of PHLPost’s functions under RA 7354; and thus, the proposed arrangement with PHIC will not fall within the purview of an Agency-to-Agency negotiated modality pursuant to the rules and the Guidelines on Agency-to-Agency Agreement. We wish to further note that the “printing services”, which PHIC intends to procure, will be ultimately performed by Filmetrics, notwithstanding the fact that the printing of ID cards under the BDSF is not covered by PHLPost-Filmetric’s JVA. To pursue an A-to-A agreement, where a private entity ultimately performs the contractual obligations of the Servicing Agency is not contemplated by the rules. The proposed setup, if implemented, may put other market operators at a disadvantage specifically so when they are capable of providing better quality “printing services” at the best price if the procurement opportunity is subjected to competitive bidding. Unless exceptional circumstances exist to warrant resort to other alternative methods of procurement, to competitively bid the procurement opportunity is still the primordial mode of procurement under the circumstances.

We hope this opinion issued by 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

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⁵ <https://www.phlpost.gov.ph/page.php?id=8> (date of last access: 11 December 2015)

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