

**NPM No. 180-2015**

29 December 2015

**MS. JACKYLENE CONCIO**  
*Secretary, Bids and Awards Committee*  
**MUNICIPALITY OF TERESA**  
jackyconcio@gmail.com

**Re: Nature of Procurement**

Dear Mr. Concio:

This refers to your letter requesting for clarification on whether the procurement of software system for collection and disbursement of a local government unit (LGU) is classified as a procurement of goods or consulting services.

It is represented that the purchase of the software system is for the Real Property Tax Collection, Business Permit and Licensing Section, and Procurement Section of your LGU. It includes the procurement of the software system, hardware (server, computers, printers), LAN cabling and license commercial software. It is in this regard that our opinion is sought relative to the correct classification of the procurement at hand.

In our earlier opinions<sup>1</sup>, we explained that the Procuring Entity (PE), guided by Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR), is in the best position to determine the correct classification of its procurement activities, whether it be one for Goods, Works or Consulting Services. In case of a mixed procurement, the nature of the procurement shall be based on the *primary purpose of the contract*.<sup>2</sup> The motivation and underlying reason behind the project is of primordial importance as this will dictate the nature and categorization of the procurement and the process and procedures to be adopted moving forward.

Accordingly, the classification of the procurement project is incumbent upon the PE to determine based on the PE's identified needs and the best way by which these needs may be addressed, managed and satisfied.<sup>3</sup>

We had the occasion to clarify the nature of Information and Communications Technology (ICT) procurements as follows:<sup>4</sup>

[t]aking into consideration the definition of Goods, Infrastructure Projects and Consulting Service" under RA 9184 and its IRR, we may infer that "Hardware" and readily available "Software" would fall under the term "Goods". On the other

<sup>1</sup> NPM No. 04-2014, dated 10 March 2014, citing NPM No. 88-2013.

<sup>2</sup> NPM No. 17-2010 dated 1 June 2010.

<sup>3</sup> *Supra*, NPM No. 04-2014.

<sup>4</sup> NPM No. 97-2015 dated 13 October 2015, citing NPM No. 88-2013 dated 25 November 2013.

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hand, “Manpower/People ware” and “Services” would fall either under the term “Goods” if such would involve general support services, or under the term “Consulting Services” if such services are highly technical and would involve professional expertise that are beyond the capability/capacity of the PE to undertake.

Moreover, in recognizing that ICT procurement may be considered as goods procurement, the Supreme Court in *Department of Foreign Affairs, et.al. v. Hon. Franco T Falcon*<sup>5</sup> held that:

[T]he IRR of Republic Act No. 9184 has some provisions that are particular to infrastructure projects and other provisions that are applicable only to procurement of goods or consulting services. Implicitly, the civil works component of information technology projects is subject to the provisions on infrastructure projects, **while the technological and other components would be covered by the provisions on procurement of goods or consulting services as the circumstances may warrant.** (*Emphasis supplied*)

All told, the Municipality of Teresa is in the best position to determine, based on its primary purpose, motivation and intention, and on the nature of the contract, whether the intended Project should be classified as Goods or Consulting Services. In exercising this responsibility, the PE should be guided by the parameters and conditions in the relevant provisions of RA 9184 and its IRR on what should be considered as Goods or Consulting Services procurement.

We hope this opinion issued by the 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 you have further questions, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director V*

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<sup>5</sup> G.R. No. 176657, September 1, 2010.