



NPM No. 32-2009

10 June 2009

MR. AUGUSTO Y. AGURA
Municipal Budget Officer
Chairman – Bids and Awards Committee
MUNICIPALITY OF CANAMAN
Dinaga, Canaman
Camarines Sur, 4402

Re : Negotiated Procurement

Dear Mr. Agura:

This refers to your letter dated 6 May 2009 seeking guidance on the Municipality of Canaman (Municipality for brevity)'s proposed mode of procurement for the "second" phase of its Municipal building rehabilitation project.

As represented, the Municipality entered into a contract amounting to Php 4,830,627.82 for "Phase I" of the Municipal building's renovation, which was awarded through competitive bidding only last March 2009. The Municipality is now intending to procure "Phase II", with a budget of Php 3,600,000.00, for the completion of the same infrastructure project.

The Municipality now seeks legal opinion whether the Municipality may resort to Negotiated Procurement for the procurement of adjacent or contiguous contracts to an on-going infrastructure projects under Section 53 (d) of the Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

Section 53 (d) mandates that Negotiated Procurement may be resorted to provided that the following conditions concur:

- a. the original contract is the result of competitive bidding;
- b. the subject contract to be negotiated has similar or related scopes of work;
- c. it is within the contracting capacity of the contractor;
- d. the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- e. the amount involved does not exceed the amount of the ongoing project;
- f. the contractor has no negative slippage; and
- g. negotiations for the procurement are commenced before the expiry of the original contract.

Thus, the Municipality may avail of Negotiated Procurement under Section 53 (d) provided that the conditions in the immediately preceding paragraph are satisfied. However, please note that this is without prejudice to the provisions against splitting of contracts as provided under the IRR-A of R.A. 9184 and relevant Commission on Audit circulars and issuances on the matter. Specifically, Section 54.1 of the IRR-A provides, thus:

Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

Further, please be advised that the Government Procurement Policy Board is merely an administrative body imbued with quasi-legislative power to determine policy directions with regard to government procurement. It has no power to dictate upon the procuring entity which mode of procurement to use.

Thus, it is only upon determination of the Bids and Awards Committee (BAC) that the requisite conditions exist, subject to the prior approval of the head of the procuring entity (HOPE), before negotiated procurement may be undertaken. In the same manner, the determination as to non-splitting of contracts lies within the responsibility of the BAC and the HOPE.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Ruby U. Alvarez
for **RUBY U. ALVAREZ**
Executive Director III



Atty- Elyce,
Pls. see file name: Canaman - Negotiated Procurement.

Kindly print as KRM.

T.R.

2 June 2009/1/1-7

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MR. AUGUSTO Y. AGURA
Municipal Budget Officer
Chairman – Bids and Awards Committee
MUNICIPALITY OF CANAMAN
Dinaga, Canaman
Camarines Sur, 4402

Re: Negotiated Procurement

Dear Mr. Agura:

In letter dated 6 May 2009, we understand that the Municipality of Canaman, Camarines Sur ("Municipality" for brevity) entered into an ongoing contract amounting to Php 4,830,627.82 for "Phase I" of the renovation of the Municipal building. The Municipality is now intending to procure "Phase II", with a budget of Php 3,600,000.00, for the completion of the same infrastructure project.

The Municipality seeks legal opinion whether the Municipality may resort to Negotiated Procurement for the procurement of adjacent or contiguous contracts to an on-going infrastructure projects under Section 53 (d) of the Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

Section 53 (d) mandates that Negotiated Procurement may be resorted to provided that the following conditions concur:

- a. the original contract is the result of competitive bidding;
- b. the subject contract to be negotiated has similar or related scopes of work;
- c. it is within the contracting capacity of the contractor;
- d. the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost;
- e. the amount involved does not exceed the amount of the ongoing project;
- f. the contractor has no negative slippage; and
- g. negotiations for the procurement are commenced before the expiry of the original contract.

Thus, the Municipality may avail of Negotiated Procurement under Section 53 (d) provided that the conditions in the immediately preceding paragraph are satisfied. Please be advised that the Government Procurement Policy Board is merely an administrative body imbued with quasi-legislative power to determine policy directions with regard to government procurement. It has no power to dictate upon the procuring entity which mode of procurement to use.

Thus, it is only upon determination of the Bids and Awards Committee that the foregoing conditions exist, subject to the prior approval of the head of the procuring entity, before negotiated procurement may be undertaken under the said paragraph. Note, however, that the foregoing shall be without prejudice to the provisions against splitting of contracts as provided under Section 54.1 of the IRR-A of R.A. 9184 and other relevant COA circulars and issuances on the matter.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

Republic of the Philippines
Province of Camarines Sur
Municipality of Canaman
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5/6/09
JAN

BIDS AND AWARDS COMMITTEE

May 6, 2009

The Executive Director

Technical Support Office (TSO)-
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road,
Ortigas Center, Pasig City 1106

Sir/Madam:

May we inquire if Sec. 53(d), Rule XVI of the IRR of RA 9184 can be adopted as a mode of procurement for the completion of the renovation of our municipal building.

splitting?

Facts of the case:

- Phase I of the renovation of our municipal building is ongoing which was awarded thru a competitive bidding in the amount of P 4,830,627.82 last March 30, 2009 funded out of our municipal funds.
- Phase II, of said building is program for the completion of said project, of which our LGU is contemplating to adopt said provision of law, hence this query. Funds for said completion is embodied in our Supplemental Budget for this year 2009. Completion will cost us P 3,600,000.00.

Thank you and hoping that we be clarified on this matter

Respectfully yours,

AUGUSTO Y. AGURA
Municipal Budget Officer/
BAC Chairman

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