

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 050-2004

April 13, 2004

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

**Re: Procurement of Financial Management Information System
Software and other Issues**

Dear Atty. Martinez:

This refers to your letter dated February 18, 2004 addressed to Dir. Estanislao C. Granados, Jr., which was referred to our office on March 3, 2004, wherein you raised several issues relative to the procurement activities of your City Government. Considering that the first three issues in your letter had already been addressed in the previous opinion which we sent to your office, we deem it proper to resolve the following remaining issues:

1. Whether or not the Financial Management Information System Software may be obtained through Negotiated Procurement under Section 53 (e) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"); and
2. Whether or not there is still a need to post/advertise items already delivered and those procured on emergency.

Procurement of Financial Management Information System Software

While Section 53 (e) of the IRR-A of R.A. 9184 allows a procuring entity to directly negotiate a contract with another government agency for the purchase of goods or to outsource it through another agency if it does not have the proficiency or capability to undertake a particular procurement, we would like to advise you that resort to this alternative method of procurement must be done with utmost



prudence and judiciousness. Under the law, procuring entities are mandated to adopt public bidding as the general mode of procurement and alternative methods are resorted to only in highly exceptional cases set forth in Sections 48-54 of R.A. 9184 and its IRR-A.¹ Moreover, the alternative methods of procurement are availed of to promote economy and efficiency, and in all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained.²

Assuming that there are justifiable reasons for the City Government of Tacloban to resort to Negotiated Procurement under Section 53 (e) in the procurement of its application system software, we agree with the observation made by the Bids and Awards Committee of your City Government that the procurement of such software might conflict with the Commission on Audit ("COA") Circular No 2001-003 dated October 2, 2001. We have observed that such circular advises all government agencies and instrumentalities, including local government units ("LGUs") to put on hold all computerization projects on their respective accounting or financial management information systems. Its pertinent provision is quoted hereunder, to wit:

To forestall duplication of efforts and wastage of resources, as well as to avoid the proliferation of disparate systems, all government agencies and instrumentalities are hereby advised to put on hold their individual projects on computerization related to accounting and/or financial management information systems.

Hence, by virtue of the above-cited proviso, it appears that the City Government of Tacloban cannot enter into a Memorandum of Agreement with the Development Bank of the Philippines Data Center Inc., (DBP-DCI) for the procurement of government application system software as it is barred by the clear proscription of COA Circular No. 2001-003. This is in line with the development of the New Government Accounting System which necessitates a common computer platform and solutions for a seamless government bureaucracy.

We would like also to call your attention to COA Circular No. 2003-005 dated July 30, 2003 which reiterates the caveat of the aforementioned COA Circular. We quote its pertinent provision, as follows:

The public is hereby warned that the Commission on Audit has not authorized any individual or private entity to develop and sell software on government accounting and financial management information systems. COA Circular No. 2001-003 dated October 2, 2001 advises all government agencies to put on hold their individual projects on computerization related to accounting and/or financial management information systems.

¹ Section 10 of R.A. 9184 and its IRR-A; Section 48.2 of the IRR-A of R.A. 9184.

² Section 48.1, IRR-A of R.A. 9184.

The Commission on Audit has already developed NGAS softwares which are ready for implementation. These will be given for free to all government agencies.

Based on the foregoing, if the application software to be procured from the DBP-DCI software in fact relates to accounting and/or financial management information systems, it is evident that the procurement of such software costing P16 Million to 19 Million Pesos would be a mere superfluity and a palpable misuse of government's funds. On this premise, we are of the opinion that such procurement is unwarranted and unnecessary.

Posting at the G-EPS Website of Procurements Conducted through Alternative Methods

Adhering to the basic principle of transparency and competition, R.A. 9184 and its IRR-A ensure fair and equal opportunity to all eligible persons and entities that may be interested to participate in government procurement. This is one of the reasons for requiring several modes for posting or advertising procurement opportunities in government entities. This is not limited to procurements conducted by way of competitive bidding, rather, it also covers procurements through any of the alternative methods provided under Rule XVI of the IRR-A. Section 21.2.4 supports this as follows:

For alternative method 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.

It is clear from the above-quoted provision that posting at the website of the procuring entity, if any, the G-EPS, and at any conspicuous place reserved for that purpose in the premises of the procuring entity concerned is required even for alternative methods of procurement.

Accordingly, emergency procurements through the alternative methods of Shopping, when there is an unforeseen contingency requiring immediate purchase as provided for under Section 52 (a) of the IRR-A, and Negotiated Procurement, in case of imminent danger to life or property, or when time is of the essence where immediate action is necessary under Section 53 (b) of the IRR-A, are required to be posted at the internet, specifically, at the G-EPS website or at the website of the procuring entity as mandated by law. However, unlike in competitive bidding, the period of posting may be waived or shortened in such alternative methods of procurement pursuant to Sections 54.2 (h) and 54.2 (d) of the IRR-A of R.A. 9184.

Lastly, we would like to stress that the posting requirement for the alternative methods of procurement under the IRR-A of R.A. 9184 should be complied with prior to the procurement activity and not after the goods have been delivered. If posting at the website of the procuring entity, the G-EPS, and at any conspicuous place reserved for that purpose is done after the goods have been procured, then we are of the opinion that such procuring entity has committed a breach of such mandatory requirement of law.

Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director