

**NPM No. 54-2007**

3 December 2007

**MS. ALIA ARUMPAC-MASBUD**  
*State Auditor IV*  
*Audit Team Leader – Team I*  
**COMMISSION ON AUDIT**  
**HOME DEVELOPMENT MUTUAL FUND**  
Cotabato Regional Office, Cotabato City

**Re : Lease of Office Space**

Dear Ms. Masbud:

We refer to your letter dated 10 April 2007 seeking clarification on whether the BAC-CGS Resolution No. 2004-002 of the Home Development Mutual Fund, Corporate Headquarters, Makati City and the corresponding Contract of Lease with the Cotabato Yu Ekey Marketing Company, Inc. conform with the provisions of Direct Contracting provided under Republic Act No. 9184 (R. A. 9184) and its Implementing Rules and Regulations-Part A (IRR-A).

Under R. A. 9184 and its IRR-A, the procuring entity shall adopt public bidding as the general mode of procurement. Alternative methods are resorted to only in highly exceptional cases set forth in Sections 48-54 of R. A. 9184 and its IRR-A.

Direct Contracting or single source procurement, one of the alternative modes of procurement, may only be employed by a procuring entity under the following circumstances:

- a) Procurement of items of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the procurement of critical plant components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or

- c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

Under the above-quoted provision, any of the conditions mentioned therein should be proven by the procuring entity to be complied with before it can resort to such mode of procurement.

As a general rule, the determination and approval of the applicable mode of procurement rest primarily with the head of the procuring entity, upon the recommendation of the Bids and Awards Committee and whenever justified by the conditions provided for under Section 53 of the IRR-A of R.A. 9184 (Section 12, R. A. 9184 and Section 48, IRR-A).

Nevertheless, we wish to inform you that the Government Procurement Policy Board (GPPB) in its Resolution No. 4-2007 dated 4 May 2007, and which became effective last 14 August 2007, resolved to amend Section 53 of the IRR-A to include lease of privately owned real estate for official use as one of the instances when the procuring entity may enter into Negotiated Procurement, to wit:

Section 53. Negotiated Procurement

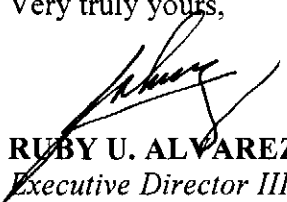
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- (i) Lease of privately owned real estate for official use, subject to guidelines to be issued by the GPPB.

Please find attached a copy of the Implementing Guidelines for Lease of Privately-Owned Real Estate, which was approved by the GPPB last 29 June 2007 through GPPB Resolution No. 19-2007.

Should you have any additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*