

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 081-2004

June 11, 2004

HON. ARTHUR C. YAP
Administrator
National Food Authority
Matimyas Bldg., 101 E. Rodriguez Sr. Ave.,
Quezon City

Re : Request for Approval on the Use of Negotiated Procurement as an Alternative Method of Procurement


Dear Atty. Yap:

This refers to your letter dated May 17, 2004, which we received on May 24, 2004 requesting for approval on the use of negotiated procurement as an alternative method of procurement in the importation of rice by the National Food Authority ("NFA") in anticipation of the lean months of production of rice in the Philippines.

We have previously answered your request through a telephone conversation with Atty. Irene V. Viñas on June 1, 2004 to the effect that an approval from the Government Procurement Policy Board ("GPPB") of the method of procurement to be used by any Government agency is not necessary. It is sufficient that the method of procurement used in a particular project is recommended by the Bids and Awards Committee ("BAC") to the head of the procuring entity concerned, and approved by the latter.

However, in a meeting with Atty. Viñas on June 4, 2004, we were informed that the subject procurement project is estimated to cost more than Three Hundred Million Pesos (P300,000,000.00). In this regard, the requirement under Section 4(a) of Executive Order 109-A ("E.O. 109-A"), dated September 18, 2003, should be taken into account. The issue therefore is as follows:

Whether or not prior GPPB approval of the alternative method of procurement to be used in projects costing at least Three Hundred Million Pesos (P300,000,000.00) is necessary.



Use of Alternative Methods of Procurement for Projects Costing At Least Three Hundred Million Pesos

As mentioned above, GPPB approval on the use of a particular alternative method of procurement is not necessary. As provided in Section 48.1 in correlation with Section 12.1 of the IRR-A, the approval on the use of alternative method of procurement shall be that of the head of the procuring entity concerned upon recommendation of the BAC.

However, emphasis should be made that E.O. 109-A, which applies suppletorily, provides that before proceeding with the alternative method of procurement for projects costing at least three hundred million pesos (P300,000,000.00), a Government agency should first obtain an opinion from the Secretary of Justice that said Government contract falls within the exceptions from public bidding and an approval from the Director-General of the National Economic and Development Authority ("NEDA") to proceed with a specific alternative method of procurement. Section 4(a) of E.O. 109-A specifically provides as follows:

Where the Head of the Procuring Entity has made a determination that a Government Contract, including Government Contracts required by law to be acted upon and/or approved by the President, involving an amount of at least Three Hundred Million Pesos (P300 Million) falls under any of the exceptions from public bidding described in Section 3 hereof, the Head of the Procuring Entity shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, obtain the following requirements:

- i. An opinion from the Secretary of Justice that said Government Contract falls within the exceptions from public bidding; and
- ii. Approval from the Director-General of NEDA to proceed with a specific alternative method of procurement under the exceptional cases provided by law and applicable rules and regulations. This authority to approve shall be lodged with the Director-General of NEDA until such time that the GPPB created under Republic Act No. 9184 informs the NEDA in writing of its decision to exercise such authority.

After obtaining the foregoing requirements, except for Government Contracts required by law to be acted upon and/or approved by the President, the Heads of the procuring entities shall have full authority to give final approval and/or enter into Government Contracts of their respective Government Agencies, entered into through alternative methods of procurement allowed by law, other than public bidding, where the Government Contract involves an amount of at least Three Hundred Million Pesos (P300 Million).

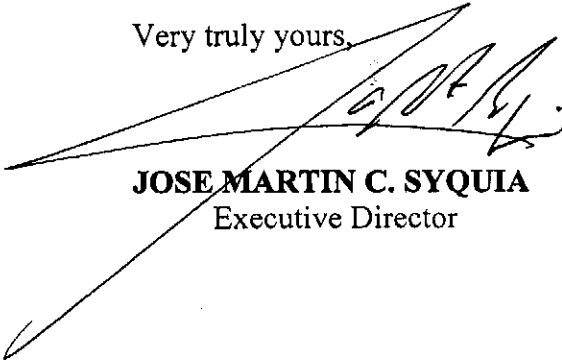
Based on the above-quoted provision, the request for approval on the use of alternative method of procurement should be lodged with NEDA until such time that the GPPB informs the former of its decision to exercise such authority. Please be informed that as of this date, no such decision has been made by the GPPB and communicated to NEDA.

In view of the foregoing, considering that there has not yet been any decision from the GPPB to exercise the authority to approve the use of alternative method of procurement for project costing at least Three Hundred Million Pesos (P300,000,000.00), the request of NFA for approval on the use of negotiated procurement as an alternative method of procurement in the importation of rice should be directed to NEDA in compliance with Section 4(a) of E.O. 109-A.

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

/dlsn/npm/nfa/06.04

R.F. REGISTRY RECEIPT	
RED	
MALACANANG POST OFFICE 1743	
Post Office MANILA	
Letter P. 1743	
Posted on	19
No. <i>1111</i> Reserve this receipt for reference in case of inquiry	
Postmaster/Teller	

RESPONSE SHEET FOR PHONE OPINIONS

Date Received/Date Called : 05.24.04 / 06.01.04

Requesting Agency : NFA

Contact Person : Atty. Irene Viñas (712-1587)

Issues/Requests : Request for approval on the use of alternative method of procurement.

Response : There is no need for the GPPB to approve the method of procurement which a procuring entity will use for a particular procurement project.

The only approval required is that coming from the head of the procuring entity upon recommendation and justification from the BAC.

Moreover, resort to foreign sources should be justified by the BAC and approved by the head of the procuring entity.

REMARK: Written opinion not requested.
Request letter requested
(NPM 081-2004, June 11, 2004)

Assigned to: Dennis

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May 25, 2004

ATTY. ARTHUR C. YAP
Administrator
National Food Authority
Matimyas Bldg., 101 E. Rodriguez Sr. Ave.,
Quezon City

Dear Atty. Yap:

We are writing to acknowledge receipt of your letter, dated May 17, 2004, addressed to the undersigned, requesting the GPPB's approval on the use of the National Food Authority (NFA) of negotiated procurement as an alternative method of procurement under Section 53(b) of the Implementing Rules and Regulations Part A of Republic Act 9184.

We wish to inform your office that we shall respond to the request of NFA at the earliest possible opportunity or raise the same to the GPPB for appropriate resolution should referral thereto becomes necessary.

In the meantime, we will coordinate with your office regarding additional information that may be required for a proper presentation of facts to the GPPB in their formulation of a resolution. In line with this, we request a point person with whom we can work with to address your concerns.

We will be calling your office within the week to finalize arrangements.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

JMS/21

Atty. Irene V. Vinas
712-1587