



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 003-2023

29 November 2023

UNDERSECRETARY GERARD L. CHAN

Undersecretary for Procurement

Department of Education

Mabini Building, DepEd Central Office Complex,
Meralco Avenue, Pasig City 1600

Dear **Undersecretary Chan**:

This refers to your letter¹ seeking an opinion on whether the proposed guidelines on the identification of titles of Learning Materials (LMs), such as books and other reading materials, of the Department of Education (DepEd) to be implemented in its Central Office and other DepEd field offices are consistent with Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) and do not violate the prohibition against accreditation (or pre-qualification or pre-selection) of bidders.

As disclosed in the said letter, LMs are learning resources that support and complement the K to 12 curriculum intended for use in public school libraries and library hubs. They will be made available and accessible to teachers and learners to create a widespread reading culture in schools. As represented, the selection of LMs has the following salient features:

1. Committees will be constituted from division offices and school units, that shall be tasked to identify the titles of the LMs to be procured for the libraries and hubs, using the DepEd's Evaluation Rating Sheet to assess the suitability of the LMs and to ensure that these are free of errors;
2. After the Committee has completed its identification of LMs, it shall issue a list that indicates the titles, quantities, authors, International Standard Book Number, and other details of the LMs; and
3. Only the specific LM titles included in the list shall be procured by the School Division Offices (SDO) or Regional Offices (RO) through Competitive or Public Bidding.²

In addition, during our consultations with your representatives,³ it was disclosed that the DepEd will be issuing guidelines on the provision of supplementary learning resources for public school libraries and library hubs, which provide:

1. Standards for the provision of library collections for public school libraries and library hubs and exclude textbooks referred to in RA No. 8047 or the Book Publishing Industry Development Act;

¹ Dated 09 August 2023, received on 14 August 2023.

² Sec. 5 e of RA No. 9184.

³ Digital consultations were held by DepEd officers and personnel from the Office of the Undersecretary for Procurement with members of GPPB-TSO's Legal and Research Division on 9 May, 26 June, and 03 August 2023.

2. Enumeration of covered learning resources, such as General References,⁴ Learning Area References,⁵ and Fiction Books/Creative Works.⁶
3. Conduct of market scoping activities by the Supplementary Learning Resources (SLR) Committees formed for the purpose, which is validated and consolidated by the SLR Management Team and later approved by the Schools Division Superintendent;
4. Use of Competitive Bidding in accordance with the provisions of RA No. 9184 and its revised IRR. The same modality shall be adopted even for a lone title under a particular category on the list, based on the assumption that the title is available from publishers, or through authorized distributors or sub-dealers to allow competition and possible lower price offers.

Citing Government Procurement Policy Board (GPPB) Resolution No. 12-2021⁷ and Non-Policy Matter Opinion (NPM) No. 054-2017,⁸ which discussed the rationale behind the prohibition on pre-qualification of bidders under RA No. 9184,⁹ you postulated that DepEd's proposed guidelines do not constitute pre-qualification as the selection process will not involve bidders, but titles of the LMs that shall be procured by field offices through Competitive Bidding. You also explained that the proposed procedure in the selection of titles of the LMs does not touch on the eligibility and adequacy of the prospective bidders before they can participate in the bidding, and issuing a list of specific titles is a standard practice in several PEs in the country like the National Library and State Universities.

Authority and Responsibility of the Procuring Entity to Plan all its Procurement

We state preliminarily that it is within the authority and responsibility of the DepEd to plan all its procurement meticulously and judiciously.¹⁰ In line with this, the determination of the appropriate method of procurement also rests within the sole authority and accountability of the Head of the Procuring Entity (HoPE), as the approving authority, and the Bids and Awards Committee (BAC), as the recommendatory body. No other agency, office or official may interfere with these functions of the HoPE and the BAC; and dictate the method of procurement to be used for a particular project. Guided by the provisions of RA No. 9184 and its 2016 IRR, the PE, through the HoPE and the BAC, is in the best position to determine the correct method of procurement for all its projects taking into consideration all the surrounding conditions for each procurement project.¹¹

The ensuing discussion will thus be for the purpose of clarifying the subject of the inquiry in light of the provisions of RA No. 9184 and its revised IRR, and not to supplant any decision made or action taken by the DepEd in the exercise of the aforementioned authority.

⁴ These provide information on topics of general interest and include, but are not limited to, encyclopedias, dictionaries, yearbooks, thesaurus, bibliographies, geographical sources, atlases, almanacs, serials, periodicals and directories.

⁵ These are materials that support learning and teaching the different learning areas under the K to 12 Program, different domains/strands, and particular topics. Textbooks are not considered within this classification consistent with Section 3.a of RA No. 8047.

⁶ These are reading materials that include a variety of literary works, such as, but not limited to, novels, collection or anthology of short stories, collection or anthology of poetry, creative non-fiction, folk literature, big books, and story books.

⁷ Dated 12 August 2021.

⁸ Dated 21 December 2017.

⁹ GPPB Resolution No. 12-2021 states that "the Congress, in crafting the procurement law, specifically provided for post-qualification instead of pre-qualification because the latter was used as a medium for collusion which defeats the purpose and essence of competitive bidding. It has been observed that pre-qualification has been used to facilitate collusive practices among bidders since the identifications of pre-qualified bidders are made public. The highly complex and subjective prequalification procedure enabled the pre-determination of a chosen or favored entity prior to the conduct of bidding."

¹⁰ Section 7 of RA No. 9184.

¹¹ NPM No. 111-2017 dated 29 December 2017;

Prohibition on Prequalification

In NPM No. 03-2006,¹² this Office had occasion to state that pre-qualification involves the conduct of a detailed and discretionary determination of the qualification of prospective bidders at the onset of procurement procedures. In NPM 54-2013,¹³ prequalification was also defined as the process of evaluating prospective bidders' qualifications against the identified requirements for a bidding activity for purposes of determining their eligibility to submit bids. The said definitions indicate the elements of prequalification as: i) the act of determining or evaluating the qualifications of prospective bidders; ii) the time when such determination is made, which is at the onset of the procurement process; and iii) the purpose thereof which is to determine the bidders' eligibility to submit bids.

It is also well to emphasize that the shift from prequalification to "eligibility screening" under RA No. 9184 was intended to simplify the procedures while expanding the pool of bidders¹⁴ and prevent collusive practices of bidders that defeat the purpose and essence of Competitive Bidding.¹⁵

Based upon the above representations and with due consideration to the rationale of the prohibition, we opine that DepEd's proposed determination of titles that shall comprise the list of LMs/SLRs to be procured by ROs and SDOs for public school libraries and library hubs does not fall within the contemplated prohibition on prequalification as it does not involve the evaluation of prospective bidders' qualifications for the purpose of determining their eligibility to submit bids.

As a final note, may we state that the above discussion was based on the particular facts presented and circumstances disclosed, and may not, therefore, be applicable given a different set of facts and circumstances.

We hope to have sufficiently addressed your concerns.

Sincerely yours,

ROWENA CANDICE M. RUIZ
Executive Director V

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¹² Dated 15 March 2006.

¹³ Dated 26 June 2013;

¹⁴ NPM No. 003-2006, dated 15 March 2006.

¹⁵ GPPB Resolution No. 12-2021.