



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 015-2018

30 April 2018

MR. EDWIN CORNELIUS A. LAUS
Bids and Awards Committee Chairperson
INSURANCE COMMISSION
1071 United Nations Avenue
Ermita, Manila

Re: Procurement of Radio Advertisements-

Dear Mr. Laus:

This refers to your letter dated 21 March 2018, which we received on 22 March 2018, seeking our opinion or suggestion on the appropriate mode of procurement for radio advertisement projects.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since this office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, except courts of competent jurisdiction, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HoPEI'm) and the BAC, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

We also wish to reiterate that it is the Procuring Entity (PE) that has the sole authority and is in the best position to determine the appropriate method of procurement for a specific project based on the identified needs and requirements of the PE and the attendant circumstances. It bears stressing, however, that Section 10 of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR) mandate that all procurement shall be done through Competitive Bidding, except when resort to alternative methods of procurement is warranted by attending circumstances. More importantly, these alternative methods of procurement shall be resorted to only in highly exceptional cases provided in Sections 49 to 53 of RA 9184 and its 2016 IRR. In the absence of these exceptional cases, procurement shall be done through Competitive Bidding.

For guidance, we wish to refer to the Negotiated Procurement under the "Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services" modality, as an

alternative method of procurement, which may be resorted to by the PE upon determination of the existence of the conditions, including the procedures for the conduct thereof, as set forth in Sections 53.6 and Section V(D)(6) of the Consolidated Guidelines for the Alternative Methods of Procurement (Guidelines) or Annex "H" of the 2016 IRR of RA 9184. Thus, Section V(D)(6)(a) of the Guidelines provides, in part, that "[t]o justify the need to procure through this negotiated modality, the End-User shall conduct a market study and determine the probable sources. This study should confirm that the supplier, contractor or consultant could undertake the project at more advantageous terms. In all cases, the market study must be conducted prior to the commencement of the procurement process."

In view of the foregoing, the procurement for radio advertisements may be conducted through Negotiated Procurement (Media Services) after the PE establishes compliance with the requirements under Section 53.6 and Annex "H" of the 2016 IRR.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

(sgd.)

~~DENNIS S. SANTIAGO~~
Executive Director V *MM*

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¹ **53.6. Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.** Where Goods, Infrastructure Projects and Consulting Services can be contracted to a particular supplier, contractor or consultant and as determined by the HoPE, for any of the following:

1. The requirement is for:
 - a. Work of art; commissioned work or services of an artist for a specific artist skills (e.g. , Singer, poet, writer, painter, sculptor, etc.);
 - b. Scientific, academic, scholarly work or research, or legal services;
 - c. Highly-specialized life-saving medical equipment, as certified by the Department of Health (DOH);
 - d. Scientific, technical, economic, business, trade or legal journal, magazine, paper, subscription, or other exclusive statistical publications and references; or
 - e. Media documentation, advertisement, or announcement through television, radio, newspaper, internet, and other communication media.

Due to the nature of the information to be disseminated, alongside principles of transparency, efficiency and economy, award to more than one (1) supplier may be made by the Procuring Entity.

2. The construction or installation of an infrastructure facility where the material, equipment, or technology under a proprietary right can only be obtained from the same contractor.