



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 023-2017

29 November 2017

HON. EPHYRO LUIS B. AMATONG

Officer-in-Charge

SECURITIES AND EXCHANGE COMMISSION (SEC)

Secretariat Building, PICC Complex, Roxas Boulevard,
Metro Manila

Re: Agency-to-Agency Agreements

Dear OIC Amatong:

This refers to your letter dated 18 September 2017, seeking our confirmation on the proper application of Section 5(a)(ii) of the Implementing Guidelines on Agency-to-Agency Agreements (*Guidelines*), as follows:

- a. Whether the components for computing the 25% mentioned in Section 5(a)(ii) of the *Guidelines* are the following:

Amount of Projects (per Category) undertaken
through Agency-to-Agency Agreements
----- x 100 = 25% or less

Total Procurement Budget for the Projects per category
(*i.e.* Goods, Infrastructure Projects or Consulting Services);

- b. Whether Lease Agreements are included in the category of goods under Section 5(a)(ii) of the *Guidelines*, which enumerates goods, consulting, and infrastructure projects as categories for procurement projects. Hence, the numerator, as shown in the equation under item (a), is the amount pertaining to all projects for goods undertaken through Agency-to-Agency, including Lease Agreements entered into by the Procuring Entity (PE);
- c. Whether procurement of Lease Contracts falls under the category of goods under Section 5(a)(ii) of the *Guidelines*;
- d. Whether in case of goods, the denominator under item (a) is made up of the total procurement budget for goods, in accordance with the Annual Procurement Plan (APP);

- e. Whether the appropriate APP to be used as basis for computation of the denominator under item (a), is the same APP for the year in which the agreement for Agency-to-Agency was executed; and
- f. Whether in case of multi-year contracts (MYCs) that require multi-year obligational authority (MYOA), the amount of projects (per Category) undertaken through Agency-to-Agency Agreements, as the enumerator under item (a) above, corresponds only to the appropriated funds of the respective year the funds are available.

At the outset, we wish to stress that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations, which excludes actual controversies such as the conduct of the bidding process by the BAC. Additionally, the determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the express mandate of the GPPB or its TSO.

It must be noted that the applicable Implementing Rules and Regulations (IRR) in this case is the 2009 revised IRR of Republic Act (RA) No. 9184, which was the IRR effective at the time the project was procured.

Agency-to-Agency Modality -

As a general rule, Procuring Entities shall adopt competitive bidding as the general method of procurement. However, resort to alternative methods of procurement, *i.e.* negotiated procurement, is allowed subject to the conditions provided under RA No. 9184 and its IRR. In all instances, the PEs shall ensure that the most advantageous price for the government is obtained and shall be resorted to only in highly exceptional cases.

One of the negotiated modalities is the Agency-to-Agency method of procurement. Under Section 53.5 of the 2009 Revised IRR of RA 9184, a government entity may engage the services of another government entity, through Agency-to-Agency, subject to the compliance with the prescribed conditions and procedures under the *Guidelines*. The *Guidelines* require the following conditions:

- i. Conduct of a Cost-benefit Analysis by the Procuring Agency indicating that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical for the government;
- ii. Total amount of all goods, consulting, and infrastructure projects undertaken or to be undertaken through Agency-to-Agency Agreements shall not exceed twenty-five percent (25%) of the Procuring Entity's total procurement budget for each category (*i.e.*, goods, infrastructure, or consulting) as reflected in its approved APP;
- iii. Servicing Agency has the mandate to deliver the goods and services required to be procured or to undertake the infrastructure project or consultancy required by the Procuring Agency; and



- iv. Servicing Agency owns or has access to the necessary tools and equipment required for the project.

Determining the 25% Threshold -

In computing the allowable threshold of twenty-five (25%) under section 5(a)(ii) of the *Guidelines*, please be guided by the following illustration:

$$\frac{\text{Total amount of projects (per category) undertaken through Agency-to-Agency Agreements}}{\text{Total Procurement Budget for each category as reflected under the agency's APP}} \times 100 = 25\% \text{ threshold or less}$$

Please take note that the categories contemplated under the *Guidelines* are those acquisition by the government that are within the coverage of RA 9184 and its IRR, that is, goods (including general support services), infrastructure projects, and consulting services.

Procurement of Goods; Lease of Venue or Real Estate Property -

Section 5(r) of the 2009 Revised IRR of RA 9184, provides that:

Goods. Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. **The term “related” or “analogous services” shall include, but not be limited to, lease or purchase of office space,** media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. (Emphasis supplied)

From the foregoing, the procurement of lease of venue or real estate property is considered as goods procurement. Accordingly, Lease Agreements are considered in determining the total goods procurement undertaken through Agency-to-Agency Agreement as the numerator in the above formula, and in the total budget for goods procurement category as the denominator in the above formula.

Agency-to-Agency Agreements should not Exceed 25% of the Total Projects per Category

It is worthy to note that the Agency-to-Agency Agreement should not exceed 25% of the total procurement budget for each category as reflected in the APP. In other words, the total amount of goods procurement under Agency-to-Agency Agreement, including Lease

Contracts undertaken through Agency-to-Agency Agreement, whether for venue or real estate, should not exceed the total budget for procurement of goods as indicated in the APP. In the illustration above, the denominator should be the total budget for the procurement of goods, not just the total budget for lease contracts alone, as reflected in the APP.

Annual Procurement Plan -

As regards the APP to be used as basis for the computation of the total procurement per category, it should be the APP for the year in which the Agency-to-Agency Agreements were entered into by the PE and the Servicing Agency, which is the year that the funds were appropriated and sourced for the said projects.

Multi-Year Obligational Authority (MYOA); Multi-Year Contract (MYC) -

In the case of *Jacomille v. Abaya*¹, quoting DBM's explanation on the nature of MYOA², the Honorable Supreme Court held that:

When government entered into MYC, it was committed to annually pay a given amount to the contractor/supplier of the project, even without the government planning for its payment. Thus, the imperative for MYOA arose, which gave an assurance that the financial commitments included in MYC are considered in the succeeding proposed budget submitted to Congress. With the issuance of MYOA, the DBM commits to recommend to Congress the funding of the MYP until its completion. Evidently, without MYOA, the government runs the risk of breach of contractual obligations if its financial commitments are not met for lack of funding.

Simply put, MYOA is an authorization document issued by the DBM to government agencies that undertake Multi-year projects with funding requirements spread over two (2) years or more. Such projects are evidenced by MYC entered into by the parties. MYOA assures the general public that government projects are adequately funded and their implementation will not be delayed. For MYCs that require MYOA, the funds appropriated cover only the first year. The succeeding years of the contract will be funded every year until it is completed. Hence, in determining the compliance of the PE in the total amount of projects (per category) undertaken through Agency-to-Agency Agreements, as the numerator in the illustration above, the costs of the projects corresponding to the respective year of the appropriated funds should be considered.

Summary –

In sum, we wish to reiterate the following:

- a. The categories contemplated under the Implementing Guidelines on Agency-to-Agency Agreements are goods (including general support services), infrastructure projects, and consulting services;


¹ G.R. No. 212381, 22 April 2015.

² Memorandum issued on 18 October 2010 as a Primer on MYOA.

- b. Lease Contracts are considered as procurement of goods under Section 5(r) of the 2009 revised IRR. Thus, in determining the total goods procurement undertaken under Agency-to-Agency Agreement, Lease Contracts are considered in the computation of the total goods procurement category.
- c. The total amount of Lease Contracts undertaken through Agency-to-Agency Agreements, whether for venue or real estate, should not exceed the total budget for procurement of goods category, as indicated in the Annual Procurement Plan.
- d. The Annual Procurement Plan to be used as basis for computation of the total procurement per category should be the APP for the year in which the Agency-to-Agency Agreements were entered into by the Procuring Entity and the Servicing Agency.
- e. For Multi-Year Contracts requiring Multi-Year Obligational Authority, the total amount of projects (per category) undertaken through Agency-to-Agency Agreements pertains only to the costs of the projects corresponding to the respective year where funds were appropriated.

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

Very truly yours
(sgd.)

Executive Director V 

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