

NPM No. 034-2017

20 December 2017

MS. YVEE CASTRO
yveecastro@gmail.com

Re : Procurement of Livestock

Dear Ms. Castro:

This refers to your electronic mail requesting for clarification on the procurement of livestock.


It is represented that you have an approved purchase request of livestock, which has exceeded your threshold. Hence, you would like to inquire whether it is necessary to go through competitive or public bidding when procuring livestock.

We would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy matter opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate to the Procuring Entity how to decide or resolve issues relative to its procurement activities. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity (HoPE) and the BAC, since these duties and responsibilities fall solely within the ambit of their authority and discretion.

Relevant to your inquiry are the following rules and procedures under Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its associated 2016 revised Implementing Rules and Regulations (IRR):

Default Method of Procurement

As a general rule, all procurement shall be conducted through competitive bidding as provided under Section 10 of RA No. 9184 and its 2016 IRR, thus: "*all procurement shall be done through competitive bidding, except as provided in Rule XVI of this IRR.*" However, in case justified by attending conditions, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided under Article XVI of RA 9184 and its 2016 IRR.

In an earlier Non-Policy Matter (NPM) Opinion¹ issued by this Office, we reiterated the use of competitive bidding as the default method of procurement regardless of amount of the approved budget for the contract (ABC) or project cost, thus: 

¹ NPM No. 011-2003 dated 12 June 2003

Contrary to the practice of UPOU, where it conducts public bidding only if the project cost is more than Five Hundred Thousand Pesos (PhP500,000.00), R.A.9184 did not qualify or restrict the use of competitive bidding in government procurement. As it is, the general rule is to procure by way of competitive bidding regardless of the project cost, and it is only in particular circumstances that government agencies are allowed to procure utilizing the alternative methods of procurement.

Based on the foregoing, Procuring Entities must abide by the general rule and use competitive bidding as its default method of procurement and resort only to alternative methods of procurement if warranted.

Resort to Alternative Methods of Procurement

Alternative Methods of Procurement may be resorted to only in highly exceptional cases, to promote economy and efficiency, and if justified by the conditions as provided for in RA 9184 and its 2016 IRR.

The *Consolidated Guidelines for the Conduct of Alternative Methods of Procurement*² (Guidelines) is found in Annex “H” of the 2016 IRR of RA 9184. On the other hand, the conditions and procedure for other alternative methods³ of procurement are provided in specific guidelines issued by the Government Procurement Policy Board.

Pursuant to Section 12 of the 2016 revised IRR of RA 9184, it is the duty and responsibility of the Bids and Awards Committee (BAC) to justify that the use of alternative methods of procurement is more efficient and economical. Should the BAC determine that resort to alternative methods of procurement is warranted, the latter must make sure that the Annual Procurement Plan (APP) is updated to reflect the same prior to the commencement of the procurement activity; and that the relevant processes and procedures are observed.

Authority to determine the appropriate method of procurement

In Non-Policy Matter Opinion No. 001-2015⁴, we opined that the authority to determine the mode of procurement to be used in a procurement activity lies with the Procuring Entity, thus:

[T]he PE 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 RA 9184 and its IRR mandates that all procurement shall be done through Competitive Bidding, except when

² A) Direct Contracting; B) Repeat Order; C) Shopping; D) Negotiated Procurement – (i) Two Failed Biddings; (ii) Emergency Cases; (iii) Take-over of Contracts; (iv) Adjacent or Contiguous; (v) Agency-to-Agency; (vi) Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services; (vii) Highly Technical Consultants; (viii) Small Value Procurement; (ix) Lease of Real Property or Venue.

³ Infrastructure Projects undertaken by AFPCOE for purposes of Sections 53.2 and 53.5 of the revised IRR of RA 9184 - covered by Appendix 13 of the 2016 revised IRR or RA 9184; Limited Source Bidding under Section 49 - covered by Appendix 12 of the 2016 revised IRR of RA 9184; NGO Participation under Section 53.11 – covered by Appendix 12 of the 2016 revised IRR of RA 9184; and Community Participation under Section 53.12 – covered by GPPB Resolution No. 09-2014.

⁴ NPM No. 001-2015 dated 05 February 2015

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 IRR. In the absence of these exceptional cases, procurement shall be done through Competitive Bidding.

To reiterate, after determination of the appropriate method of procurement, the BAC shall make sure that such method is in accordance with the APP and approved by the Head of the Procuring Entity (HoPE) prior to the commencement of the procurement activity.

Summary

As a general rule, procurement shall be procured through competitive bidding pursuant to Section 10 of RA 9184 and its 2016 IRR. Alternative Methods of Procurement may be resorted to only in highly exceptional cases, to promote economy and efficiency, and if justified by the conditions as provided for in RA 9184 and its 2016 IRR. The BAC recommends the procurement modality, while the HOPE approves or disapproves the same.

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 there be other concerns, please do not hesitate to contact us.

Very truly yours
(sgd.)

Executive Director V. [Signature]

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