

NPM No. 038-2017

20 December 2017

MR. ALVIN P. PRINCIPE

Director

DEVELOPMENT ACADEMY OF THE PHILIPPINES (DAP)

DAP Building, San Miguel Avenue, Pasig City

Re: DAP Trainings -

Dear Director Principe:

This refers to your electronic mail seeking clarification on whether the trainings conducted by the Development Academy of the Philippines (DAP) are procurement activities under Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR).

As represented, the DAP, which is mandated to conduct trainings, requests its clients to provide a Bids and Awards Committee (BAC) Resolution stating that the latter is entering into an agency-to-agency agreement with the former. However, one of your clients asserted that BAC Resolution is unnecessary since trainings are not considered procurement activities under RA 9184. Hence, clarification is requested on Section 4.5(b) of the 2016 IRR.

Scope and Application of RA 9184 -

Section 4.5(b) of the 2016 Revised IRR of RA 9184 expressly provides that participation in local or foreign scholarships, *trainings*, continuing education, conferences, seminars or similar activities that shall be governed by applicable Commission on Audit (COA), Civil Service Commission (CSC), and Department of Budget and Management (DBM) rules is not a procurement activity.

Section 4.5(b) of the 2016 IRR applies to those activities organized by entities, whether private or public, other than the procuring entity itself, and such activities entail the participation of the officials and employees of the procuring entity as part of the latter's career and personnel development plan in accordance with Section 25¹ of RA 2260, as

¹ **Section 25. Career and Employee Development.** The development and maintenance of a high level of employee performance is a primary concern of the Government. It shall be the policy of the government that a continuing program of employee training, supervisory, career and executive development be established under the leadership of the Civil Service Commission for all government personnel at all levels.

Each department, bureau, office or agency shall have an appropriate training staff and shall establish its own in-service training program in accordance with standards laid down by the Commission.

The Commission may request technical assistance from the Budget Commission, the Institute of Public Administration and other professional and technical organizations in connection with the promotion of government training programs.

amended, and Sections 30² and 31³ of Book V Title I Subtitle A Chapter 1 of Executive Order (EO) No. 292 or the Administrative Code of 1987. Moreover, Section 4.5(b) of the 2016 IRR contemplates the **payment of tuition fees or training fees** relative to such local and foreign trainings, continuing education, conferences, seminars or similar activities the official or employee will be participating in under the career and personnel development plan of the procuring entity or agency subject to the applicable COA, CSC and DBM rules and regulations.

On the other hand, when a procuring entity intends to conduct in-house training activities as part of its mandate and functions, the implementation of such program or activity, including the different components thereof, such as, but not limited to, training service provider or consultant, lease of venue, production of training materials, and transportation expenses, are covered by RA 9184 and its IRR.

Negotiated Procurement; Agency-to-Agency -

Resort to Negotiated Procurement (Agency-to-Agency) under Section 53.5 of the 2016 IRR of RA 9184 is further elucidated in the *Consolidated Guidelines for the Alternative Methods of Procurement* (Guidelines) or Annex “H” of the 2016 IRR is subject to the following procedural requirements:

- (i) The End-User unit shall justify to the BAC that the resort to Agency-to-Agency is more efficient and economical to the government.
- (ii) It shall likewise secure a certificate from the relevant officer of the Servicing Agency that the latter complies with all the foregoing conditions.
- (iii) Based on the assessment and recommendation of the End-User unit, the BAC shall issue a Resolution recommending the use of Agency-to-Agency Agreement to the Head of the Procuring Entity (HOPE).
- (iv) In case of approval, the HOPE shall enter into a Memorandum of Agreement (MOA) with the Servicing Agency.

Based on the foregoing, the BAC Resolution recommending the use of Negotiated Procurement (Agency-to-Agency) is a mandatory requirement in instances where the Procuring Entity resorts to such modality, and the approval by the HOPE is a condition precedent to the execution of the MOA between the Procuring Entity and the Servicing Agency.

To help insure the availability of a pool of trained administrators in the executive and senior levels, and to further improve the competence and performance of executives in the different branches, subdivision and instrumentalities of the Philippine Government, the Institute of Public Administration of the University of the Philippines with the cooperation of the Budget Commission, the Civil Service Commission and the National Economic Council shall organize and carry out a continuing program of executive development.

² SEC. 30. Career and Personnel Development. - The development and retention of a competent and efficient work force in the public service is a primary concern of government. It shall be the policy of the government that a continuing program of career and personnel development be established for all government employees at all levels. An integrated national plan for career and personnel development shall serve as the basis for all career and personnel development activities in the government.

³ SEC. 31. Career and Personnel Development Plans. - Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission. Such career and personnel development plans which shall include provisions on merit promotions, performance evaluation, in-service training, including overseas and local scholarships and training grants, job rotation, suggestions and incentive award systems, and such other provisions for employees' health, welfare, counseling, recreation and similar services.

Summary -

In view of the foregoing, DAP may enter into a MOA with its client through Negotiated Procurement under the Agency-to-Agency modality sanctioned by Section 53.5 of the 2016 IRR of RA 9184 if the training sought by the client is a training activity other than that covered by Section 4.5(b) of the 2016 IRR. In addition, resort to this negotiated mode of procurement must comply with the conditions and procedural requirements prescribed in the Guidelines, including the issuance of a BAC resolution recommending the use of Negotiated Procurement under the Agency-to-Agency modality as approved by the HOPE.

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.

Very truly yours
(sgd.)

Executive Director V

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