

NPM No. 053-2017

21 December 2017

MR. LOUENEL A. ELISES
Chairperson, BAC Secretariat
DEPARTMENT OF EDUCATION
DepEd Complex, Meralco Ave.,
Pasig City

**Re: Approval of GPPB prior to Procuring Entity's
Resort to Alternative Methods of Procurement -**

Dear Mr. Elises:

This refers to your electronic mail (e-mail) requesting guidance on the conduct of alternative methods of procurement. More specifically, you request for guidance on what documents must be submitted in order to secure approval from the GPPB prior to your conduct of procurement activity under any of the alternative methods of procurement.

Competitive Bidding; Alternative Methods of Procurement -

As a general rule, all procurement shall be conducted through competitive bidding as provided under Section 10 of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), thus: "*all procurement shall be done through competitive bidding, except as provided in Rule XVI of this IRR.*" However, in cases justified by conditions provided in RA 9184 and its IRR, 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.

Alternative Methods of Procurement may be resorted to only in highly exceptional cases¹, to promote economy and efficiency, and if justified by conditions² set forth under the law and the rules. Specifically, Annex "H" of the 2016 IRR provides for the *Consolidated Guidelines for the Conduct of Alternative Methods of Procurement* (Guidelines). For other alternative methods³ of procurement not contained in Annex "H", the conditions and procedures are provided in specific guidelines issued by the Government Procurement Policy Board.

¹ Section 48.2 of the 2016 revised IRR of RA 9184

² Section 48.1 of the 2016 revised IRR of RA 9184

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.

GPPB Approval Not Required -

Resort to alternative methods of procurement is subject to certain conditions as provided in the appropriate Guidelines as mentioned above. However, these Guidelines do not require Procuring Entities to secure the approval of the GPPB prior to the use of any of the alternative modes of procurement.

It will be recalled, however, that Section 4 of Executive Order (EO) No. 423 s. 2005⁴, as amended by Executive Order No. 645 s. 2007, once required the approval of the GPPB for the use of alternative method of procurement with an approved budget for the contract (ABC) of at least PhP 500,000,000.00, thus:

[W]here the Head of the Procuring Entity has made a determination that a Government Contract , including Government contracts required by law to be acted upon and/or approved by the President, involving an amount of at least Five Hundred Million Pesos (P500,000,000.00) falls under any of the exceptions from public bidding described in Section 3 hereof, the Head of the Procuring Entity shall, before proceeding with the alternative methods of procurement provided by law and applicable rules and regulations, **obtain the approval of the Government Procurement Policy Board (GPPB) that said Government proposed procurement undertaking falls within the exceptions from public bidding and that the proposed specific alternative mode of procurement is appropriate.** (Emphasis supplied)

However, by way of further amendment to EO 423, through Executive Order No. 34 s. 2017⁵, prior approval from GPPB for the use of any of the alternative methods of procurement with an ABC of at least PhP 500,000,000.00 is no longer required. At present, for procurement (through any of the alternative methods) of “[G]overnment contracts involving an amount of at least PhP 500 Million, the Head of the Procuring Entity issues a certification under oath that the contract falls within the exceptions from public bidding, is being entered into in faithful compliance with all applicable laws, rules and regulations, and is advantageous to the government.”⁶ Notably, the requirement of securing approval from GPPB has already been removed by EO 34 s. 2017.

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 



⁴ Took effect on 03 June 2005

⁵ Dated 17 July 2017

⁶ Section 4, EO 423 s. 2005, as further amended by EO 34 s. 2017.