

NPM No. 071-2017

21 December 2017

MS. WILMA D. PADILLA
Assistant Head, BAC Secretariat
PROVINCIAL GOVERNMENT OF NEGROS ORIENTAL
Kagawasan Ave, Dumaguete, Negros Oriental

Re: Negotiated procurement under Section 53.5 (Agency-to-Agency) -

Dear Ms. Padilla:

This refers to your electronic mail (e-mail) requesting for opinion on the eligibility documents to be submitted for Negotiated Procurement under the Agency-to-Agency modality sanctioned by Section 53.5 of the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, the Government Procurement Reform Act.

It is represented that you intend to commence procurement activity through Negotiated Procurement under the Agency-to-Agency mode with Vicente Sotto Memorial Medical Center (VSMMC) for the procurement of various medicines. Hence, the following inquiries:

- (1) Whether or not VSMMC may be considered as Servicing Agency under RA 9184; and
- (2) What are eligibility documents that will be required from VSMMC in the conduct of the Negotiated Procurement (Agency-to Agency)?

VSMMC as Servicing Agency -

Under Section 53.5 of the 2016 IRR of RA 9184¹, Negotiated Procurement through the Agency-to Agency modality is a method of procurement of Goods, Infrastructure Projects and Consulting Services from another agency of the Government of the Philippines (GoP) tasked to or has the mandate to sell or provide the product, such as the Department of Budget and Management - Procurement Service (DBM-PS), which is tasked with a centralized procurement of Common-Use Supplies for the GoP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, s. 1989.

The conditions, rules and procedures for the conduct of Negotiated Procurement under the Agency-to-Agency mode are provided in Annex "H" or the *Consolidated Guidelines for the Alternative Methods of Procurement* (Guidelines). Pursuant to Section V.D.5(a) of the Guidelines, Negotiated Procurement under the Agency-to-Agency mode is

¹ Published on 29 August 2016 and took effect on 28 October 2016

further defined as procurement from another agency of the government (i.e. Servicing Agency) that has the mandate to deliver goods or services or to undertake infrastructure projects or consultancy services as required by the Procuring Entity. Resort to this negotiated procurement modality is subject to the following conditions:

1. The Procuring Entity shall justify that entering into an Agency-to-Agency Agreement with the Servicing Agency is more efficient and economical to the government;
2. 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;
3. Servicing Agency has the absorptive capacity to undertake the project;
4. Servicing Agency owns or has access to the necessary tools and equipment required for the project;
5. Sub-contracting is not allowed. However, the servicing agency may implement the infrastructure project in-house, by job-order, or through the pakyaw contracting system; and
6. For procurement of infrastructure projects, the Servicing Agency must have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand.²

From the foregoing, VSMCC may qualify as a Servicing Agency as contemplated under Section 53.5 of the 2016 IRR of RA 9184, if the conditions set forth in Section V.D.5(b) are complied with. Particulary, VSMCC must have the mandate to deliver the goods and services required to be procured by the Procuring Agency and the absorptive capacity to undertake the project. It must own or has access to the necessary tools and equipment required for the project. It bears stressing that sub-contracting by the Servicing Agency is not allowed.

Eligibility Documents of the Servicing Agency -

Should the End-User Unit determine that the above-cited conditions are present, the End-User unit shall justify to the BAC that resort to Agency-to-Agency Agreement is more efficient and economical to the government. It shall likewise secure from the relevant officer of the servicing agency ***a certificate stating the latter's compliance to the conditions provided.*** Thereafter, the Bids and Awards Committee (BAC), based on the assessment and recommendation of the End-User unit, shall issue a Resolution recommending the use of Agency-to-Agency Agreement to the HoPE. In case of approval, the HoPE shall enter into a Memorandum of Agreement (MOA) with the Servicing Agency.

Appendix A, Annex "H" of the 2016 IRR of RA 9184, which lists down the documentary requirements for the alternative methods of procurement covered by the Guidelines, did not provide any eligibility or documentary requirements that must be submitted by the Servicing Agency. Accordingly, as long as the conditions under Section 53.5 and Section V.D.5(b) are present and the procedural guidelines under Section V.D.5(c) are followed, no other document is required from the Servicing Agency before the Procuring Entity engages the services of the latter.

² Section V.D.5(b) of the Guidelines.

Summary –

In sum, we wish to stress the following:

- 1.) VSMCC may qualify as a Servicing Agency as contemplated under Section 53.5 of the 2016 IRR of RA 9184, provided the conditions set forth in Section V.D.5(b) of the Guidelines are complied with; and
- 2.) As long as the conditions under Section 53.5 and Section V.D.5(b) of the Guidelines are present and the procedural guidelines under Section V.D.5(c) are followed, no other document is required from the Servicing Agency before the Procuring Entity engages its services.

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.)

~~DENNIS S. SANTIAGO~~
Executive Director *VSM*

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