

**NPM No. 109-2017**

29 December 2017

**MS. MARIA GRACIA P. DELA RAMA**

*Chief Administrative Officer, Procurement Division*

**TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA)**

3<sup>rd</sup> Floor TESDA Admin Building, TESDA Complex

East Service Road, South Superhighway, Taguig City

**Re: Repeat Order -**

Dear Ms. Dela Rama:

This refers to your electronic mail seeking our opinion on whether TESDA can use Repeat Order as an alternative method of procurement for its purchase of additional four (4) units of service vehicle.

It is represented that TESDA was given a budget of Twenty Three Million Three Hundred Five Thousand Pesos (Php23,305,000) in 2016, valid until end of December 2017, to purchase twenty (20) units of vehicle, which was approved by the Office of the President last March 2017. TESDA was able to award the same with the contract amount of Eighteen Million Nine Hundred Sixty Thousand Pesos (Php18,960,000). Therefore, TESDA has a balance of Four Million Three Hundred Forty-Five Thousand Pesos (Php4,345,000) and would want to purchase additional 4 units of vehicle with the same specifications. Given the time constraint, they thought of using the alternative modality of Repeat Order instead of conducting public bidding. Hence, this query.

At the outset, we wish to clarify that the determination of the appropriate procurement method to be used for a particular project rests within the authority and accountability of the Head of the Procuring Entity (HOPE), as the approving authority, and the Bids and Awards Committee (BAC), as the recommendatory body.<sup>1</sup> We adhere to the position that no other agency, office or official may interfere with these functions of the HOPE and the BAC and dictate the appropriate procurement method to be used for a particular project. Guided by the provisions of Republic Act (RA) No. 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR), the Procuring Entity (PE), through the HOPE and the BAC, is in the best position to determine the appropriate method of procurement for all its projects taking into consideration all the surrounding circumstances for each procurement project.

<sup>1</sup> Section 12.1 of the IRR of RA 9184 in relation to Section 48.1 of the IRR of RA 9184.

As a general rule, all procurement shall be done through competitive bidding,<sup>2</sup> the exceptions to this are provided in Article XVI of RA No. 9184 through the Alternative Methods of Procurement. In order to safeguard the governing principles on government procurement,<sup>3</sup> the conditions under the exceptions must be strictly complied with.

RA 9184 allows the use of Repeat Order as an alternative method of procurement. However, in order to avail of this mode, each procuring entity would have to comply with the conditions provided for under Section 51 of RA 9184 and Section V(B), Annex "H" of the 2016 IRR, the *Consolidated Guidelines for the Alternative Methods of Procurement*, thus:

Section 51. Repeat Order. - When provided for in the Annual Procurement Plan, is a method of procurement of Goods from the previous winning bidder, whenever there is a need to replenish goods procured under a contract previously awarded through Competitive Bidding, subject to the following conditions:

- a) Unit prices of the repeat order must be the same as or lower than those in the original contract: Provided, That such prices are still the most advantageous to the GoP after price verification;
- b) The repeat order will not result in splitting of contracts, requisitions, or purchase orders, as provided for in Section 54.1 of the IRR;
- c) Except in cases duly approved by the GPPB, the repeat orders shall be availed of only within six (6) months from the date of the Notice to Proceed arising from the original contract: Provided, That there has been a partial delivery, inspection and acceptance of the goods within the same 6-month period; and
- d) Repeat orders shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract. In order not to exceed the 25% threshold, the goods under the original contract must be:
  - i. Quantifiable
  - ii. Divisible; and
  - iii. Consisting of at least four (4) units per item.

Accordingly, TESDA may resort to the use of Repeat Order, as long as it can justify the existence of all the conditions warranting its use and provided that it will comply with all the requirements prescribed under existing rules, including other government policies and issuances relative to the acquisition of motor vehicles. In this regard, TESDA may verify if there is a need to seek another authority and approval for the purchase of the additional vehicles pursuant to Administrative Order (AO) No. 233<sup>4</sup>, s. 2008, implemented by Budget Circular No. 2017-1 (which repealed Budget Circular No. 2010-02 s. 2010, as amended by 2016-05 s. 2016; and National Budget Circular No. 446 s. 1995, as amended by National Budget Circular No. 446-A s. 1998).

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<sup>2</sup> Section 10 of RA 9184.

<sup>3</sup> Section 3 of RA 9184.

<sup>4</sup> Reiterating the Prohibition on the Acquisition and Use of Luxury Vehicles and Directing Revisions of Guidelines on Government Vehicles Acquisition.

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.

(sgd.)

~~DENNIS SANTIAGO~~  
*Executive Director V* 

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