



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 018-2016

21 March 2016

[REDACTED]

Re: Method of Procurement

Dear [REDACTED]

This refers to your electronic mail (e-mail) inquiring about the method of procurement to be used for the procurement of supply and installation of three (3) phase primary line (a5 construction assembly) and installation of three (3) units 15 KVA distribution transformer.

As represented, First Laguna Electric Cooperative (FLECO) is the sole provider of electricity in your area. Considering that FLECO is a cooperative and therefore considered a non-government agency, you are seeking clarification on whether it is correct to use NGO Participation as a modality of Negotiated Procurement under Section 53.11 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 for the abovementioned procurement.

At the outset, we wish to clarify that the determination of the appropriate method of procurement rests within the sole 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.¹ 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 method of procurement to be used for a particular project. Guided by the provisions of RA 9184 and its revised Implementing Rules and Regulations (IRR), the Procuring Entity (PE), through the HOPE and the BAC, is in the best position to determine the correct method of procurement for all its projects taking into consideration all the surrounding conditions for each procurement project.

Section 10 of RA 9184 mandates that all procurement shall be done through competitive bidding, except as provided for in Article XVI thereof, which enumerates the allowable alternative methods of procurement. Accordingly, alternative methods of procurement may be resorted to only upon prior approval of the Head of the Procuring Entity (HOPE), in order to promote economy and efficiency, and whenever justified by the conditions for each alternative method of procurement specified in Sections 49 to 53 of the

¹ Section 12.1 of the IRR of RA 9184 in relation to Section 48.1 of the IRR of RA 9184.

IRR of RA 9184.² This is consistent with the pronouncement of the Supreme Court that competitive bidding may not be dispensed with nor circumvented, and alternative methods of procurement may only be resorted to in the instances provided for by law.³

Under Section 53.11 of the IRR of RA 9184, when an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB. To implement this provision, the GPPB issued Resolution No. 12-2007, dated 29 June 2007, adopting the *Guidelines on Non-Governmental Organization Participation in Public Procurement*. We note that the term NGO, as used in the guidelines, include a cooperative duly registered with the Cooperative Development Authority (CDA).⁴ However, we wish to emphasize that this method of procurement may be resorted to only in case an appropriation law or ordinance *specifically earmarks* an amount for projects to be specifically contracted out to NGOs.⁵

In this regard, the question of whether NGO Participation, as a modality of Negotiated Procurement, can be resorted to depends on whether the appropriation law or ordinance earmarking an amount for the procurement of supply and installation of 3 phase primary line (a5 construction assembly) and installation of 3 units 15 KVA distribution transformer specifically requires that it be contracted out to NGOs. If so, the procuring entity may resort to such method of procurement, following the provisions of Sections 48 and 53.11 of the IRR of RA 9184, as well as the *Guidelines on Non-Governmental Organization Participation in Public Procurement*. Otherwise, competitive bidding, as the default mode of procurement, or other applicable method of procurement shall be resorted to.

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~~ *DS*

² Section 48.1 of the IRR of RA 9184.

³ *Manila International Airport Authority, et al v. Olongapo Maintenance Services Inc., et al; Antonio P. Gana, et al. v. Triple Crown, etc.; Triple Crown etc. v. Manila International Airport Authority, et al.*, G.R. Nos. 146184-85/ G.R. No. 161117/ G.R. No. 167827, January 31, 2008.

⁴ Section 4.2 of the Guidelines on NGO Participation in Public Procurement.

⁵ Section 2, *Ibid.*