

**NPM No. 066-2016**

15 November 2016



**Re: Lease of Privately-Owned Real Estate**

Dear [REDACTED]


This refers to your electronic mail (e-mail) inquiring on the method of procurement to be adopted for your intended lease of an office space adjacent to your existing office space.

In your e-mail, it was disclosed that your office has existing space which you are occupying free of rent. However, you are looking for a bigger area; thus, the building owner offered an additional space adjacent to your existing office space to comply with the area requirement with corresponding rental charges. The following issues were raised for our opinion:

1. Whether or not the agency can indicate in the Technical Specifications that it is in need of an area that is adjacent to its existing office area; and
2. The method of procurement to be adopted by the agency for this project.

**Preparation of Technical Specifications**

The General Procurement Manual defined “technical specifications” as the physical description of the goods or services, as well as the Procuring Entity’s requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. The technical specifications must include the testing parameters for goods, when such testing is required in the contract.

In determining the technical specifications of the goods or services it will procure, the PMO or end-user unit must consider the needs of the procuring entity; the objectives of the project; and the entire procurement at hand, and identify the standards that should be met by the goods or services in terms of function, performance, environmental interface and/or design. Hence, depending on the need of the procuring entity, it may require standards that must be met to conform with the need of the procuring entity. As regards lease of space, the requirements and specifications should reflect the needs of the procuring entity; one of which could be “accessibility” or “proximity,” that may be provided in the technical specifications. 

### Method of Procurement to be Adopted

Under Section 10 of RA 9184 and its revised Implementing Rules and Regulations (IRR), all procurement shall be done through competitive bidding. Nonetheless, the same section allows procuring entities to resort to alternative methods of procurement in highly exceptional cases, subject to the conditions required therein. Among these highly exceptional cases is Negotiated Procurement on the Lease of Real Property under Section 53.10 of the IRR. Thus, the procuring entity may directly negotiate a contract with a technically, legally and financially capable supplier in lease of privately-owned real property and venue for official use subject to the guidelines issued by the GPPB

The Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue (Guidelines) provide the rules and procedures in entering into contracts for lease of privately-owned real estate and venue by government agencies for official use. Under the Guidelines, procurement of contracts of lease of real property does not require procuring entities to resort to public bidding as a pre-condition. It merely requires procuring entities to conduct cost-benefit analysis to assess the feasibility of leasing a privately-owned real estate or venue as against purchasing or leasing from a government-owned real estate or venue.

The abovementioned principle was laid down in an earlier opinion,<sup>1</sup> that contracts for lease of real property, such as venue, may be procured by way of negotiated procurement under Section 53.10 (Lease of Real Property) of the IRR without need of prior resort to public bidding, but subject to the rules and procedures established in the Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue.

### Summary

All told, the law authorizes procuring entities to prepare and craft detailed technical specifications in their bidding documents; and it is incumbent upon them to show that the specifications or conditions set forth are based on relevant characteristics and/or performance requirements. Also, contracts for lease of real property, such as venue, may be procured by way of negotiated procurement under the revised IRR without need of prior resort to public bidding, subject to the rules and procedures established in the Guidelines for Lease of Privately-Owned Real Estate and Venue.

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.)

~~DEJESUS S. SANTILAGO~~  
*Executive Director V*

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<sup>1</sup> NPM 092-2014 dated October 28, 2014 and NPM 067-2012 dated May 31, 2012