

**NPM No. 099-2016**

15 November 2016



**Re: Lease Agreement; Purchase Order; Authority to Procure Vehicles**

Dear :

This refers to your electronic mail (e-mail)<sup>1</sup> requesting for guidance on the following matters:

1. Whether there is an existing Guidelines on the procurement of field or laboratory equipment through lease agreement.
2. Whether the issuance of a Purchase Order (PO) instead of a contract is sufficient for Negotiated Procurement under two-failed biddings modality.
3. Whether there is a need to secure an authority to procure vehicles from the Office of the President (OP) if the funds are released to the agency under the General Appropriations Act (GAA).

**Lease Agreement**

There exist no specific guidelines that apply to the procurement of field or laboratory equipment through lease agreement. Nonetheless, the relevant provisions under the 2016 revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 can provide guidance since such procurement activity is covered by the same rules on the procurement of goods. It will be noted that procurement is defined under Section 5(aa) of the 2016 IRR of RA 9184 as:

The acquisition of goods, consulting services, and the contracting for infrastructure projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, *i.e.*, Goods, Infrastructure Projects or Consulting Services, shall be determined based on the primary purpose of the contract. **Procurement shall also include the lease of goods and real estate.** With respect to real property, its procurement shall be governed by the provisions of R.A. 10752 and other applicable laws, rules and regulations. (Emphasis supplied)

<sup>1</sup> August 18, 2016.

It is an established public policy,<sup>2</sup> as well as a statutory mandate<sup>3</sup> that all government procurement shall be done through competitive public bidding. However, as an exception, in order to promote efficiency and economy, Article XVI of Republic Act (RA) No. 9184 sanctions resort to alternative methods of procurement. Hence, depending on the attending circumstances, the BSWM may procure the lease of field or laboratory equipment through competitive bidding or through the appropriate alternative method of procurement.

The pertinent provisions of the standardized Philippine Bidding Documents, as well as the Generic Procurement Manual issued by the Government Procurement Policy Board (GPPB) will guide you as regards the applicable rules on the matter.

### **Purchase Order**

It bears stressing that procurement under Negotiated Procurement under Two-Failed biddings modality involves a contract for the procurement of goods, infrastructure projects and consulting services. The contract is perfected at the moment there is meeting of minds upon the thing which is the object of the contract and upon the price.

The elements of a contract are present in Negotiated Procurement under Two-Failed Biddings modality for the procurement of goods, infrastructure projects and consulting services, *to wit*: (a) determinate subject matter (*i.e.* the goods, infrastructure project and consulting services to be supplied, constructed and performed, respectively); (b) price certain in money or its equivalent (*i.e.* price to be paid by the procuring entity (PE)); and (c) consent or meeting of the minds between the PE and the supplier, contractor or consultant.

The contract may be embodied in the form of a PO being issued by the PE. In the case of *Raza Appliance Center v. Hon. Rolando R. Villaraza and R.A. Uy Appliance Center*<sup>4</sup> the Supreme Court held that:

The purchase order is not, as contended by the petitioner, the contract sued upon. By itself, it was only an offer to buy. Under Article 1475, the contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price... The meeting of minds took place in Cagayn de Oro City when the vendor received the purchase order, agreed to its terms, and acted upon it.

Thus, a PO, by itself, is an offer to buy, and a meeting of minds thereon takes place when the vendor receive[s] the PO, agree[s] to its terms and act[s] upon it, which will constitute an accepted offer that will give rise to a perfected contract.

### **Guidelines on the Acquisition of Government Motor Vehicles**

As regards the authority to purchase vehicles, Section 3 of Administrative Order No. 15<sup>5</sup>, issued by the Office of the President, entitled "Reiterating the Prohibition on the Acquisition and

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<sup>2</sup> *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Inc.*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 241.

<sup>3</sup> Section 10, Article IV of RA 9184 provides that "[a]ll Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." (RA 9184).

<sup>4</sup> G.R. No. L-58452, September 30, 1982.

<sup>5</sup> 25 May 2011.

Use of Luxury Vehicles and Directing Revisions of Guidelines on Government Motor Vehicles Acquisition”, provides that:

**SECTION 3.** Section 9.0 of AO No. 233 is hereby amended to read as follows:

“9.0 The authority to evaluate, recommend and approve the purchase of the following types of motor vehicles, which are not classified under Section 2.0 or 7.0, is delegated to the following:

9.1 For motor vehicle acquisitions of departments, attached agencies, GOCCs, and GFIs, the evaluating and recommending authority is vested with DBM, while the approving authority is vested, with the department secretary concerned;

9.2 For motor vehicle acquisitions of LGUs, the approving authority is vested with DILG; and

9.3 For motor vehicles of other government offices/agencies not covered by the foregoing, the evaluating and recommending authority is vested with DBM, while approving authority is vested with OP.”

**Summary**

Based on the foregoing, we wish to stress the following:

1. There exists no specific guidelines on the procurement of field or laboratory equipment through lease agreement, the relevant provisions on competitive bidding and alternative methods of procurement under RA 9184 and the 2016 revised Implementing Rules and Regulations remain applicable depending on the circumstances at hand;
2. The contract may be embodied in the form of a Purchase Order. A Purchase Order will constitute an accepted offer that will give rise to a perfected contract when the winning bidder received the same and agreed to its terms and conditions, and the bidder acted upon it.
3. The procuring entity shall secure the appropriate authority to purchase vehicles based on Administrative Order No. 15.

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 you have further questions, please do not hesitate to contact us.

Very truly yours,

(sgd.)

**DENNIS S. SANTIAGO**  
*Executive Director V*

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