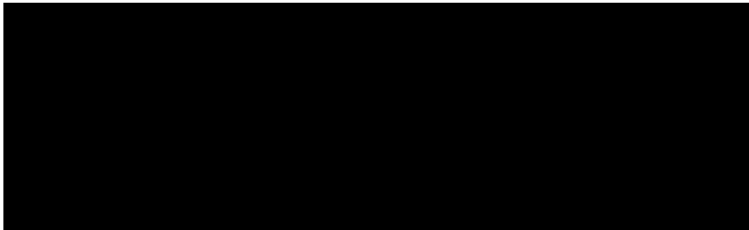


NPM No. 110-2016

6 December 2016



Re: Mixed Procurement

Dear [REDACTED]:

This refers to your letter inquiring whether the procurement method adopted by the PAGASA-Bids and Awards Committee (PAGASA-BAC) for consulting services is in accordance with the provisions of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

You mentioned in your letter that PAGASA planned to establish a proposed DOST-PAGASA Meteorological-Hydro-Meteorological Telecommunication Network ("All Weather Communication System"), which aims to provide IP connectivity to all of PAGASA's existing synoptic, agromet, Doppler weather radar, upper air and hydro-meteorological river basin enters and other specialized observing stations. Thus, your Office undertook to implement the project into several phases or stages. For the first phase of the project involving the Design and Upgrade of Existing Transmission Backbone in IP-Based Microwave Radio and Power System Project, Phase 1 – Visayas and Mindanao – All Weather Communication System Program, the PAGASA-BAC resolved to implement the project through the procurement of consulting services.

In accordance with the provisions of Republic Act No. 9184 and its IRR, the PAGASA-BAC caused the posting/advertisement of the Request for Expression of Interest in the PhilGEPS website, PAGASA website, its designated bulletin board and in a newspaper of general circulation. There were six (6) prospective bidders but only three (3) "Passed" the preliminary examination and evaluation of bids using the non-discretionary "Pass/Fail" criterion. From the three (3) remaining bidders, only two (2) had been shortlisted as eligible bidders. The BAC notified all the shortlisted bidders including those who did not qualify. Thereafter, the BAC issued the bidding documents to the shortlisted consultants and conducted the Pre-Bid Conference. All amendments to the bidding documents agreed upon by the parties were issued through a Supplemental/Bid Bulletin.

However, PAGASA received a letter from Anti-Trapo Movement of the Philippines (ATM) questioning the procurement of the consulting services for the abovementioned

project, arguing that the project does not involve or is not in the nature of consultancy services. Hence, this request.

At the outset, we would like to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) render policy and non-policy opinions, respectively, on issues purely pertaining to the interpretation and application of procurement laws, rules and regulations. We have no authority to dictate to the procuring entity how to decide or resolve issues relative to its procurement activities. Moreover, we adhere to the position that we cannot, nor any other agency, authority, or official, encroach upon or interfere with the exercise of the functions of the Head of the Procuring Entity and the Bids and Awards Committee, since these duties and responsibilities fall solely within the ambit of their authority and discretion. In this regard, we shall limit our discussion on the interpretation of relevant procurement rules and regulations pertinent to the issues presented.

Section 5(aa) of the IRR of RA 9184 explicitly states that in case of 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. This same principle was reiterated by the Government Procurement Policy Board (GPPB) in its Resolution No. 29-2013¹. Further, in our previous opinions,² we had the occasion to discuss the matter, thus:

“[T]he procuring entity is in the best position to determine the correct classification of its procurement based on its identified needs and the best way by which these needs may be addressed, managed, and satisfied. The motivation or intention of the procuring entity in pursuing the project will determine its primary purpose. Nevertheless, the procuring entity should be guided by the parameters and conditions in the relevant provisions of Republic Act No. 9184 and its IRR on what should be considered as goods, infrastructure project, and consulting services. It is the role of the procuring entity to determine the nature of a mixed procurement based on the identified primary purpose of the project.”

We take note of the position of the PAGASA-BAC as articulated in its letter that the multifaceted requirements of the project as detailed in the Terms of Reference suggests a mixture of procurement types. Considering the complexity of the project as well as the applicable provisions of RA 9184, PAGASA-BAC determined that the project is in the nature of “design and upgrade scheme” which partakes of a consulting service.

In this regard, we wish to reiterate our previous opinion that the procuring entity, guided by the relevant provisions of RA 9184 and its IRR, has the responsibility to determine the nature of procurement, *i.e.*, goods, infrastructure projects or consulting services, based on the identified primary purpose of the contracts.

On a final note, as regards the Bidding Documents for mixed procurement, we would like to inform you that under Section 17.2. of the 2016 Revised IRR³ of RA 9184 provides that the Procuring Entity shall specify in the Bidding Documents the requirements, criteria

¹ Dated 25 October 2013.


² NPM Nos. 97-2015 dated 23 October 2015 and 138-2013 dated 22 December 2013.

³ Published on 29 August 2016 and took effect on 28 October 2016.

and other conditions of the bidding procedures and of the ensuing contract as applicable to each component of the project.

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 S. SANTIAGO
Executive Director 

//Ird2