

NPM No. 119-2015

27 November 2015

Re: Observers for Small Value Procurements (SVP)

Dear [REDACTED]

This refers to your electronic mail, dated 9 November 2015, requesting our guidance on whether external observers are required for Negotiated Procurement (Small Value Procurement) under Section 53.9 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

Section 13 of RA 9184 expressly states that the BAC shall in "all stages of the procurement process," invite observers to sit in the proceedings. The procurement process contemplated under Section 13 of the law and its associated rules refer to "competitive bidding", which, by definition, "[r]efers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract."¹ Thus, the BAC is required to invite observers who may attend and observe all stages of the procurement, especially: i) the pre-bid conference; ii) opening of bids; iii) bid evaluation; iv) post-qualification; and, v) contract award.

On the other hand, RA 9184, its revised IRR, and the *Guidelines for Shopping and Small Value Procurement (Guidelines)*, which prescribe the general procedures for procurement through SVP, do not expressly require the invitation and/or presence of observers in the conduct of SVP by the procuring entity. Only in cases where competitive bidding or a semblance thereof is present, such as in Limited Source Bidding² under Section 49 of the revised IRR of RA 9184 and Negotiated Procurement (Two-Failed Biddings)³ under Section 53.1 thereof, that procuring entities are mandated to invite observers.

This being the case, except in LSB and Two-Failed Biddings modalities where invitation of observers are mandatory, the PE has the discretion to invite observers in the

¹Section 5(h), Implementing Rules and Regulations of RA 9184.

² Section 49.4 provides in part that "[a]ll other procedures for competitive bidding shall be undertaken, except for the advertisement of the Invitation to Bid/Request for Expression of Interest under Section 21.2.1 of the IRR."

³ Section 53.1.6 specifically provides that "[i]n all stages of the negotiations, observers shall be invited."

procurement of goods, infrastructure projects, and consulting services using any of the alternative method of procurement, for purposes of enhancing transparency, which is one of the governing principles of government procurement under RA 9184, alongside public monitoring of the identified procurement activities.

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 V

