

NPM No. 126-2015

27 November 2015

[REDACTED]

Re: Multi-Year Contract

Dear [REDACTED]

This refers to your letter requesting the approval of the Government Procurement Policy Board (GPPB) relative to your proposed procurement of a Five (5)-Year Contract for the Infusion Pumps Consumable Tie-Up.

As represented, the NKTi has planned to partner with a private proponent for the provision of infusion pump where NKTi will be charged with the consumption of the infusion sets under a supplies tie-up agreement for a period of five (5) years. As further represented, with an equipment investment cost of Thirty Five Million Pesos (PhP 35,000,000.00) for Four Hundred Twenty (420) units of infusion pumps and consumables costing an average of One Hundred Pesos (PhP 100.00) to Three Hundred Twenty Five Pesos (PhP 325.00) per set, the suppliers will only be able to recover its investment over a period of at least five (5) years. Hence, the above-mentioned request for GPPB approval.

GPPB Approval

We wish to clarify that the prior approval of the GPPB before a Procuring Entity (PE) may proceed to the conduct of a procurement is only necessary for government contracts involving an amount of at least 500 Million Pesos, where the Head of the Procuring Entity (HOPE) has made a determination that such contract falls under any of the exceptions from public bidding.¹ Thus, GPPB approval is not necessary in the following cases:

1. When the amount of the government contract to be procured through alternative method of procurement is less than 500 Million Pesos; or
2. Regardless of the amount of government contract where the mode of procurement is competitive or public bidding.

¹ Section 4 of Executive Order No. 423 Series dated 18 September 2003 Prescribing the Rules and Procedures on the Review and Approval of All Government Contracts to Conform to Republic Act No. 9184 otherwise known as the 'Government Procurement Reform Act', as amended by Executive Order No. 645 dated 31 July 2007.

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In such cases, the PE may proceed with the conduct of competitive or public bidding, or in exceptional cases, in order to promote economy and efficiency, resort to any alternative methods of procurement provided under Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR), subject to the prior approval of the HOPE, and whenever justified by the conditions required by the procurement law and the rules.²

For government contracts requiring GPPB approval (amount is at least 500 Million Pesos and mode of procurement is alternative method of procurement), the applicable provisions are found in the Internal Rules for the Exercise by the GPPB of its Approval Power under Executive Order 423 that was adopted by the GPPB, through GPPB Resolution No. 11-2006³ as amended by GPPB Resolution No. 22-2012⁴, while the documentary requirements are specified in GPPB Resolution No. 33-2014⁵.

Multi-Year Projects

Government contracts involving multi-year projects are governed by the provisions of the annual General Appropriations Act (GAA) and the corresponding implementing guidelines issued by the Department of Budget and Management (DBM). Specifically, Section 30 of the General Provisions of RA 10651 (the *Fiscal Year (FY) 2015 GAA*) provides that departments, bureaus and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and State Universities and Colleges (SUCs) shall request the DBM for the issuance of a Multi-Year Obligational Authority (MYOA) for multi-year projects where the total cost is not provided in RA 10651, subject to pertinent guidelines issued by the concerned agencies.

To implement this provision of RA 10651, which has been consistently reenacted since FY 2003, DBM has issued the following Budget Circulars:

1. Circular Letter No. 2015-7, dated June 3, 2015, entitled "*Updated Guidelines for Issuance of Multi-Year Obligational Authority (MYOA)*";
2. Circular Letter No. 2014-3, dated, March 27, 2014 entitled "*Expansion of Coverage for the Issuance of Multi-Year Obligation Authority (MYOA) under CL No. 2004-12*"; and
3. Circular Letter No.2013-17, dated December 23, 2013, entitled "*Clarifying/Updating the Documentary Requirements for Issuance of Multi-Year Obligational Authority (MYOA)*".

These Circulars provide for the list of the documentary requirements and the procedural guidelines for the issuance of a MYOA, an authority which must be secured from the DBM prior to the conduct of public bidding for multi-year projects. Such requirements and procedures, however, apply only when a Procuring Entity intends to procure a multi-year project that will require multi-year appropriations, that is, the current appropriation is not sufficient to cover the full cost of the project.

² Section 10 in relation to 48.1 of the IRR of RA 9184.

³ Dated 14 June 2006.

⁴ Dated 24 September 2012.

⁵ Dated 16 December 2014.

In this regard, the NKTi may verify with the DBM if it is allowed to enter into multi-year contracts under the aforementioned DBM Circulars or whether its governing board is authorized to enter into multi-year contracts under its enabling law or corporate charter. If MYOA will be requested from the DBM, the NKTi should follow the guidelines, procedures and requirements contained in the above-mentioned Circulars and other applicable rules and regulations, before the conduct of any procurement activity.

Joint Venture with Private Entities

Apart from procuring the services of a private entity, government entities⁶ may also opt to enter into a partnership with private entities, in which case, the processes and procedures under RA 9184 and its associated issuances are no longer applicable. The rules, guidelines and procedures in forging Joint Venture (JV) Agreements between government entities and private entities are prescribed by the Revised Guidelines and Procedures for Entering into JV Agreements between Government and Private Entities (*Revised JV Guidelines*, for brevity) as approved on 3 May 2013.

Under Section 5.7 of the Revised JV Guidelines, JV refers to an arrangement whereby a private sector entity or a group of private sector entities on one hand, and a government entity or a group of government entities on the other hand, contribute money/capital, services, assets (including equipment, land, intellectual property or anything of value), or a combination of any or all of the foregoing to undertake an investment activity. The investment activity shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the private sector under competitive market conditions or to the government.

We note the proposal of the NKTi to enter into partnership with a private entity for the provision of infusion pump. If such proposal contemplates a JV as defined above, and the NKTi decides to pursue this kind of contractual arrangement, rather than procure the services of private entities, the rules, guidelines and procedures laid down in the Revised JV Guidelines should be observed, and not the provisions of RA 9184 and its associated issuances.

Summary

All told, we wish to clarify the following matters relative to your concern:

1. GPPB approval is only necessary for government contracts involving an amount of at least 500 Million Pesos, where the HOPE has made a determination that such contract falls under any of the exceptions from public bidding;
2. For multi-year projects where the total cost is not provided in the PE's current appropriation, the PE may, if applicable, request a MYOA from the DBM following the requirements and procedures specified in the Circulars issued for the purpose and/or revisit its enabling law or corporate charter if allowed to enter into a multi-year contract; and

⁶ Include Government Owned and/or Controlled Corporations (GOCCs), Government Corporate Entities (GCEs), Government Instrumentalities with Corporate Powers (GICPs), Government Financial Institutions (GFIs), and State Universities and Colleges (SUCs).

3. In forging Joint Venture (JV) Agreements between government entities and private entities, the rules, guidelines and procedures prescribed by the Revised Guidelines and Procedures for Entering into JV Agreements between Government and Private Entities should be observed.

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

