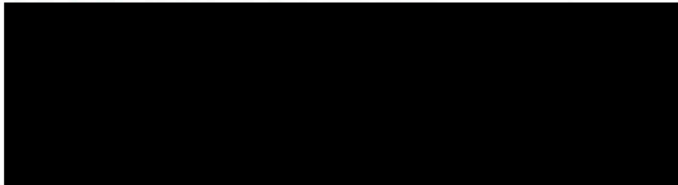


NPM No. 154-2015

11 December 2015



Re: Procurement of Individual Consultants

Dear [REDACTED]

This refers to your email requesting for an opinion on the applicability of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 to the procurement of individual consultants.

As represented, NORSU hired two individuals as research consultants to assist in the University's Journal publication. Their respective contracts were later on renewed as approved by the Board of Regents. However, the resident Auditor questioned the process due to the absence of supporting documents reflecting the bidding process. In its defense, NORSU claims that the consultants were hired as individuals making the advertising and posting requirements in the PhilGEPS inapplicable. As a result of the observation by the Auditor, the consultants have not been invited back for the past seven months to assist in the publication. It is in this context that our opinion is sought.

At the outset, please be informed that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) do not have the authority to review or determine the factual findings made by the Commission on Audit (COA) Auditors alongside performance of their official functions concerning a particular procurement activity. As an independent constitutional office, and being the government's Supreme Auditing Institution, the GPPB and its TSO will not touch and encroach upon the findings of the COA Auditors, whilst a violation of its independence and constitutional mandate to audit transactions and expenditures of a government office or instrumentality is committed. Accordingly, we shall limit our opinion on the interpretation and application of the rules embodied in the procurement law and its IRR.

Competitive Bidding as Default Method of Procurement

We wish to reiterate that as a general rule, Section 10 of RA 9184 mandates that all procurement shall be done through Competitive Bidding. In this regard, the advertisement and posting requirements mandated by Section 21 of the IRR of RA 9184 must be observed by the Procuring Entity (PE), such that failure to comply with the requirements will render the procurement invalid.

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We likewise emphasize that the procurement of individual consultants are still subject to the rules on Competitive Bidding. It is only in highly exceptional cases, and when justified by the conditions provided by the IRR of RA 9184 that the Alternative Methods of Procurement may be resorted to. Hence, that the procurement of the services of individual consultants remains to be covered by RA 9184 and its associated IRR, including the rules on Competitive Bidding.

Negotiated Procurement; Highly Technical Consultants

Section 53.7 of the IRR of RA 9184 allows the procurement of Individual Consultants through Negotiated Procurement under the Highly Technical Consultants modality, provided that the work to be done is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary considerations for the hiring of the individual consultant. In line with this, the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the HOPE, but in no case shall exceed the term of the latter.

In the procurement of Highly Technical Consultants, Section 54.2 of the IRR of RA 9184 allows that the advertisement and posting prescribed in Section 21.2.1 of the IRR may be dispensed with. However, Section 54.3 of the IRR still requires the Bids and Awards Committee (BAC), through its Secretariat, to post the Notice of Award for information purposes in the PhilGEPS, in the official website of the PE, and at any conspicuous place reserved for the purpose in the premises of the PE.


Summary

All told, the procurement of individual consultants is within the scope and application of RA 9184 and its IRR, and is still subject to the rules on Competitive Bidding. On the other hand, the engagement of a Highly Technical Individual Consultant may be conducted through Negotiated Procurement; however, compliance with the requirements and procedures for the engagement of Highly Technical Individual Consultants as an Alternative Mode of Procurement is still required, such as, the posting of the Notice of Award must be observed at all times.

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

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