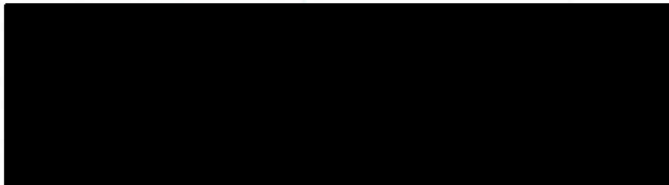


NPM No. 155-2015

11 December 2015



Re: Direct Contracting of DNA Testing Services

Dear

This refers to your email endorsing the request of Dr. Pia Bagamasmad, a Professor of the University of the Philippines (UP), for an opinion on the preference of UP to procure DNA Testing Services from a foreign supplier through Direct Contracting pursuant to Section 50 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

As represented, UP intends to procure DNA Testing Services which will analyze DNA samples. The project is estimated to cost at least ₱500,000.00 and is available from only one company in the Philippines. However, the said Filipino company acts only as a middleman and forwards the DNA samples to a foreign company for the actual testing. In this regard, UP also realized that foreign companies are not inclined to participate in public bidding due to the numerous documentary requirements needed from foreign bidders. Hence, UP proposed to resort to Direct Contracting under Section 50 of the IRR of RA 9184, believing that it may be faster and cheaper to hire the foreign companies outright. However, its resident Auditor advised them to conduct public bidding instead since it is a more efficient way of spending public funds. It is in this regard that our opinion is sought.

Section 10 of RA 9184 requires that a Procuring Entity (PE) shall, as a general rule, adopt competitive bidding as a mode of procurement. However, in order to promote efficiency and economy, the PE may resort to any alternative mode of procurement, subject to the approval of the Head of Procuring Entity (HOPE).¹

On the other hand, Direct Contracting under Section 50 of the IRR of RA 9184 may only be resorted to in the procurement of tangible goods² for the following grounds:

- 1) wherein the goods can only be procured from the proprietary source;
- 2) when the procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a

¹ Section 48 of RA 9184.

² NPM 083-2013, dated 30 October 2013.

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- contractor to guarantee its project performance, in accordance with the provisions of his contract; or
- 3) those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

In view of the foregoing, it is observed that the project involves the procurement of services and not of tangible goods as contemplated under Section 50 of RA 9184 and its revised IRR. Thus, Direct Contracting may not be the proper alternative modality for the identified procurement activity. This being the case, the procuring entity may consider other alternative modalities of procurement, such as Small Value Procurement, among others.

In addressing the concerns of the Procuring Entity on the unnecessary cost of contracting with a middleman or an intermediary, it is advised that a thorough market research be conducted such that an acceptable and reasonable Approved Budget for the Contract (ABC) will not result into wastage of public funds. Likewise, it is also advised that the Bidding Documents reflect the applicable technical specifications and actual requirements of the project to be procured (*e.g. ownership or possession of equipment, track record, etc.*) such that only bidders with the capability and capacity to perform may participate.

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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