

**DSWD OPINION NO. 07 S. 2024**  
**MEMORANDUM**DRN: LS-L-LO-23-11-08005-C

**FOR** : **MIRAMEL GARCIA-LAXA, RSW, MPA**  
Director IV, Program Management Bureau

**FROM** : **ASSISTANT SECRETARY FOR GASSG AND THE**  
**CONCURRENT OFFICER-IN-CHARGE**  
Legal Service

**SUBJECT** : **REQUEST FOR TECHNICAL ASSISTANCE IN THE**  
**PROVISIONS UNDER GOVERNMENT PROCUREMENT**  
**POLICY BOARD RESOLUTION NO. 07-2022**

**DATE** : **28 DECEMBER 2023**

This pertains to the MEMORANDUM dated 17 November 2023 received by the Legal Service on 22 November 2023, requesting for legal opinion on the Government Procurement Policy Board (GPPB) Resolution No. 07-2022 entitled "Approving the Guidelines on the Engagement of Procurement Agent and Related Amendments to Sections 7.3.3 (a), 11.2.2(e), and 47.1 of the Revised Implementing Rules and Regulations (RIRR) of the Republic Act No. 9184 (RA No. 9184)" in relation to the implementation of the milk feeding of children under the Supplementary Feeding Program (SFP).

Your office's concern is whether or not the milk feeding program being implemented by the DSWD through a fund transfer modality with the National Dairy Authority (NDA) and the Philippine Carabao Center (PCC) which facilitates the procurement of the fresh milk through accredited cooperatives, may be affected by the issuance of the GPPB Resolution No. 07-2022.

The milk feeding program is not affected by the cited GPPB Resolution as the latter issuance pertains to an entirely different matter.

Section 7.3.3 (a) of the RIRR of RA No. 9184 reads as follows:

*7.3.3 In order to hasten project implementation, Procuring Entities which may not have the proficiency or capability to undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by:*

*a) Requesting other GoP agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with the relevant issuance of the GPPB and government budgeting, accounting and auditing rules;*

*As long as the procurement process was conducted in accordance with RA 9184, its IRR and associated issuances, recommendations to award a contract made by the government procurement agent shall be accepted by the requesting agency, subject to Section 41 of this IRR. x x x [Emphasis Supplied]*

In this regard, the GPPB issued Resolution No. 07-2022 which covers only the engagement of a Procurement Agent by the Procuring Entity (PE). It states in Annex A

(Guidelines on the Engagement of a Procurement Agent) particularly Item 2 on Scope and Application that:

## 2. SCOPE AND APPLICATION

2.1. This Guidelines shall apply to the outsourcing of procurement tasks by the PE to any branch, constitutional commission, agency, department, bureau, office, or instrumentality of the Government of the Philippines, National Government Agencies, including Government-Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units acting as Procurement Agents;

2.2. This shall only cover items not considered as Common-Use Supplies and Equipment (CSE) since the purchase of the CSE is undertaken through the Procurement Service of the Department of Budget and Management (DBM) based on applicable laws and issuances; and

2.3. This shall govern the engagement of a Procurement Agent upon the effectivity hereof. For PEs that have existing agreements with Procurement Agents, they are encouraged to adopt this Guidelines to the extent possible.

That is, the cited GPPB Resolution refers to the outsourcing of a procurement agent by the procuring entity. In this case of the milk feeding of children under the SFP, there is no outsourcing of a procurement agent to speak of. Hence, the GPPB Resolution No. 07722 is not applicable and will not affect the milk feeding program of DSWD.

Meanwhile, for clarification on the appropriate legal references for the SFP implementation, may we direct you to Section 5.3, Rule II of the Implementing Rules and Regulation (IRR) of Republic Act No. 11037 (RA No. 11037) otherwise known as the "*Masustansyang Pagkain Para sa Batang Pilipino Act*" which stressed that the Department is authorized to coordinate and to enter into agreement with the NDA and/or PCC in accordance with the existing procurement laws, thus:

### **5.3 Milk Feeding Program. x x x**

*The NDA, being the country's authority on milk and dairy products and the PCC, as the agency mandated to conserve, propagate and promote the Philippine Carabao as a source of milk, shall assume the lead roles in assisting the NGAs for the nationwide coordination and implementation of milk feeding programs as well as feeding programs having milk as part of the menu. The NGAs assisted by the NDA and the PCC, shall ensure that all plans, agreements, systems and procedures for fresh milk and fresh milk-based product procurement and distribution, program funding and implementation, generating more livelihood opportunities for the local dairy industry and farmers, private sector participation are formulated and developed. The NGAs prior to the approval and adoption of the procurement procedure, shall consult the Government Policy Procurement Board (GPPB) to ensure compliance with existing procurement laws, rules and regulations.*

x x x

*For funding arrangements, and subject to existing procurement auditing, and accounting laws, rules and regulations, a Memorandum of Agreement (MOA) may be entered into generally between and among DepED, DSWD, DA and the NDA, and/or PCC, or between interested NGA and/or LGU and the NDA and/or PCC. [Emphasis Supplied] x x x*

Moreover, Section 12, Rule VIII of the IRR of the RA No. 11037 specifically provides that the NGAs shall establish and promulgate a community-based mode of procurement and *the GPPB shall review the existing procurement guidelines and manuals, and if deemed necessary, amend existing guidelines and manuals such as the Partnership Against Hunger and Poverty (PAHP) and Community Participation Procurement Manual.*

Reference is made to the GPPB Resolution No. 18-2021<sup>1</sup> dated 22 October 2021, which is the established standard procedure for the community-based mode of procurement, liquidation, and audit through the conduct of Negotiated Procurement – Community Participation (NP-CP) to ensure the efficient and effective implementation of RA No. 11037. Annex “A” with the subject “*Guidelines for the Conduct of Community Participation in Procurement*” of the said resolution even provides:

### 1. PURPOSE

X X X

*1.3 Established a standard procedure for the conduct of NP-CP in the procurement of Goods and Simple Infrastructure Projects from Community or Social Groups or members thereof; this notwithstanding, other procurement modalities may still prescribed in provisions of the following laws:*

**1.3.1 RA No. 11037 or the “Masustansyang Pagkain para sa Batang Pilipino Act”;**

X X X

On the other hand, Section V of the DSWD Memorandum Circular (MC) No. 29 s. 2020 is consistent with the IRR of RA No. 11037 as it states that:

X X X

**3. Fresh milk and fresh milk-based products to be procured and utilized for feeding programs, consistent with Section 4(c) of RA 11037 in relation to Section 16 of RA 7884 (National Dairy Act of 1995) and Section 5 (d) of RA 7307 (Philippine Carabao Act of 1992), shall be done in coordination with the NDA and PCC to determine conformity to the standards and qualifications of the law and the program.**X X X

Clearly, under the rules and internal guidelines, the DSWD is explicitly allowed to engage the NDA and/or the PCC for purposes of implementing the milk feeding program of children, subject to procurement laws. In fact, the Department, through a Memorandum of Agreement, has rightfully partnered with the concerned agencies for the milk feeding program of children being implemented by the DSWD through a fund transfer modality with the NDA and PCC, which facilitates the procurement of the fresh milk through accredited cooperatives.

As regards the transfer of funds from DSWD to NDA and/or PCC for the SFP implementation, in the GPPB Resolution No. 07-2022, the GPPB-TSO has already settled the issue on the prohibition of transfer of funds under Commission on Audit (COA) Circular No. 94-013, to wit:

***WHEREAS, the DPWH representative clarified if the prohibition on the transfer of funds in the proposed Guidelines would cover transfer of funds to implementing agencies like DPWH. The GPPB-TSO explained that the transfer of funds under COA Circular No. 94-013 pertains to the transfer of funds to an implementing agency which will undertake the implementation of the project***

<sup>1</sup> Approving the Amendment to Section 53.12 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 and the Guidelines for the Conduct of Community Participation in Procurement.

**as authorized by law. In contrast, the prohibition in the proposed Guidelines covers the transfer of funds by the PE to the Procurement Agency for the latter's payment to winning bidder. This is prohibited because the Procurement Agent acts only as the BAC of the PE and not in the implementing agency for the project; [Emphasis Supplied]**

In this case, the NDA and the PCC are both implementing agencies of the milk feeding of children under the SFP as they are primarily involved in the purchasing of the required locally-produced milk from local farmers and cooperatives, and the delivery of the milk products to the Child Development Center areas, consistent with the existing law and rules.

Therefore, the fund transfer modality under COA Circular No. 94-013 being adopted by the DSWD with the NDA and/or the PCC, as implementing agencies of the milk feeding of children under the *Masustansiyang Pagkain Para sa Batang Pilipino Act*, is **not** covered by this GPPB issuance.

On 23 December 2023, LS received a MEMORANDUM dated 18 December 2023 from your office seeking guidance on the allowable administrative cost that can be included in the MOA for additional cost for the delivery, inspection, hiring of staff and other matters related to the milk feeding implementation.

Under Section 5.3, Rule II of the IRR of the RA No. 11037 provides:

***For funding arrangements, and subject to existing procurement, auditing and accounting laws, rules and regulations, a Memorandum of Agreement (MOA) may be entered into generally between and among DepEd, DSWD, DA and the NDA and/or PCC; or between the interested NGA and/or LGU and the NDA and/or PCC. [Emphasis Supplied]***

Considering the above, the IRR of the RA No. 11037 does not limit the administrative cost provided that it is consistent with the procurement, auditing and accounting laws, rules and regulations.

Further, RA No. 11975 known as "General Appropriations Act Fiscal Year 2024" (GAA 2024) also provides special provision for the implementation of Supplemental Feeding Program:

***11. Supplemental Feeding Program. The amount appropriated herein shall be used to implement Supplemental Feeding Program for undernourished children ages three (3) to five (5) enrolled in LGU-run Child Development Centers (CDCs), those ages two (2) to four (four) enrolled in Supervised Neighborhood Play (SNP), and those five (5) years old not enrolled in DepEd kindergarten but enrolled in CDC or SNP. The feeding program includes the provision of fortified meals such as hot meals, milk supplementation, ready-to-eat/ cook foods, and vitamin-enriched bread, including nutribun, five days a week for 120 days.***

***Implementation of this program shall be subject to the guidelines to be issued by the DSWD, consistent with the provision of R.A. No. 11037 (Masustansiyang Pagkain Para sa Batang Pilipino Act). [Emphasis Supplied]***

On the other hand, Section XI of the DSWD MC No. 29 s. 2020 is consistent with the IRR of RA No. 11037 as it states that:

XI. The minimum amount allocation of nineteen pesos (P19.00) per child per day for 120 days milk feeding shall be allocated as provided in the General Appropriations Act.

This is **subject to periodic review and adjustment upon approval of the Secretary to conform with current market prices of goods/commodities** to ensure the provision of quality and nutritious milk that will contribute to the improvement of the nutritional status of the children beneficiaries. *[Emphasis Supplied]*

That is, the legal references cited serve as basis for the administrative cost for the implementation of the Supplementary Feeding Program (SFP).

Here, the additional administrative cost for the delivery, inspection, hiring of staff and other matters related to the milk feeding implementation may be allowed under the laws and existing DSWD issuances. However, the administrative cost amounting to nineteen pesos (P19.00) per child per day for 120 days of milk feeding was expressly provided under DSWD MC No. 29 s. 2020. Thus, we highly recommend that the Program Management Bureau must consider reviewing the current market prices of milk based on the assessment with their partners NDA and/or PCC to ensure the quality and nutritious milk for the children beneficiaries, as well as to provide the possible amount of administrative cost subject to the approval of the Secretary.

Since, the proposed budget of the administrative cost of twenty-two pesos (P22.00) for implementation of the SFP was not approved based on the approved GAA 2024, ~~as~~ per confirmation with the focal person, Ms. Flores, the administrative cost of the supplementary feeding program should remain at P19.00.

For your consideration.

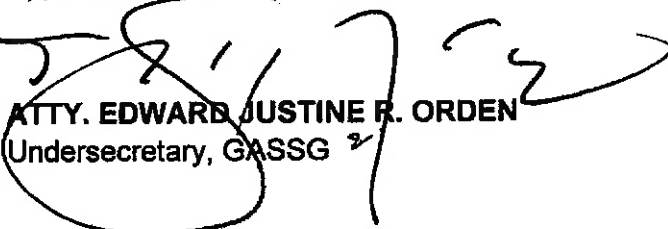
Lastly, kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.

  
ATTY. GINA V. WENCESLAO

CMUG/MTM/10065  


Approved by:

  
ATTY. EDWARD JUSTINE R. ORDEN  
Undersecretary, GASSG <sup>2</sup>