

**NPM No. 022-2017**

29 November 2017

**HON. FRANK R. CIMA FRANCA**  
*Assistant Secretary*  
**DEPARTMENT OF FOREIGN AFFAIRS (DFA)**  
**OFFICE OF CONSULAR AFFAIRS**  
2330 Roxas Blvd., Pasay City

Re: Third-Party Outsourcing of the Visa Application Process

Dear Assistant Secretary Cimafranca:

This refers to the request of DFA to the Government Procurement Policy Board (GPPB) for guidance on the procurement formalities required for the proposed third-party outsourcing of visa applications, in order to modernize and streamline visa applications in Foreign Service Posts (FSPs) and to respond to the Presidential directive to hasten the processing of visas for Chinese nationals.<sup>1</sup>

We understand that the DFA is currently studying the possibility of outsourcing the non-sensitive aspects of the visa application process to a third-party company, which is currently being implemented by other countries in China. It is likewise represented that the services to be provided by the third-party company will be at no cost to the DFA, as the former will charge an additional service fee to the applicant on top of the visa fees collected by the Department. In this regard, the DFA wishes to seek the Board's guidance on the procurement formalities required for such undertaking.

We wish to reiterate the Board's discussion and recommendation on a related issue raised by another government agency as to the applicability of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR). The Board clarified that "procurement" is defined as the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity.<sup>2</sup> In the process of acquisition, public funds are disbursed by the government. Hence, for as long as public funds are utilized or is contemplated to be spent for any procurement activity, it shall, by force, fall within the ambit of the procurement law. On the other hand, if the government transaction or activity does not involve use of public funds, such transaction or activity is not within the purview and coverage of RA 9184 and its IRR. There are two important elements to be considered in determining whether the activity is considered procurement within the coverage of RA 9184 and its IRR, thus:

1. The activity involves the acquisition of goods, consulting services, and the contracting for infrastructure projects; and
2. Public funds are utilized or is contemplated to be spent.

<sup>1</sup> Dated 7 August 2017.

<sup>2</sup> Section 5(aa) of RA 9184.

The GPPB-TSO previously issued a Non-Policy Matter opinion<sup>3</sup> where we explained that RA 9184 and its associated IRR provide for the rules in the acquisition of goods, infrastructure projects, and consulting services in relation to an identified appropriation. Thus, if an activity does not involve expenditure of funds in relation to an identified appropriation, RA 9184 and its IRR do not apply. In line with this, Section 4.4 of the 2016 revised IRR states that it shall not apply to activities involving public-private sector infrastructure or development projects and other procurement covered by RA 6957, as amended by RA 7718, or the Build Operate and Transfer (BOT) Law, except those portions financed by the government.

Hence, in case of projects where the government entity partners with the private sector entity, where the latter shoulders the cost through a Public Private Partnership arrangement; or where the former is set to earn or profit by way of partnership rather than spend public funds, commonly termed as Joint-Venture, it is advisable to look into the applicability of the BOT Law and the Joint-Venture Guidelines<sup>4</sup> issued by the National Economic and Development Authority (NEDA). Note, however, that the Joint-Venture Guidelines issued by NEDA applies only to 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)

Anent all the foregoing, the law and its IRR cover the acquisition of goods, civil works, and consulting services by government, which contemplates procurement of projects to be funded by public funds.<sup>5</sup> It must be emphasized, however, that although the transaction does not fall under the procurement law and its associated rules, it is but prudent and judicious for government agencies to transact only with an entity that is legally, technically and financially capable to perform and execute the project sought to be undertaken. It is likewise advisable to consult with the Commission on Audit for appropriate and more authoritative clarifications relative to the applicable auditing and accounting rules governing the transaction.

We hope that we have provided sufficient clarification on the matter. Should there be need for further clarification, please do not hesitate to contact us.

Very truly yours,

  
**BENNIS S. SANTIAGO**  
*Executive Director V*

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<sup>3</sup> NPM No. 129-2012 dated 16 October 2012.

<sup>4</sup> Approved on May 3, 2013, and published on May 11, 2013.

<sup>5</sup> *Department of Foreign Affairs and Banko Sentral ng Pilipinas v. Hon. Franco T. Falcon and BCA International Corporation*, G.R. No. 176657, 1 September 2010.