

NPM No. 048-2017

20 December 2017

MR. PEDRO T. BAOY
Vice President
SOCIAL SECURITY SYSTEM (SSS)
East Avenue, Diliman, Quezon City 1101

Re: Applicability of Republic Act (RA) No. 9184 -

Dear VP Baoy:

This refers to the Honorable Vice President's letter seeking our opinion on whether the SSS proposed long term lease and development project will have no conflict with RA 9184 or the Government Procurement Reform Act.

As represented, SSS owned a 4.45 hectares property located at East Avenue corner EDSA, Diliman, Quezon City, which it plans to offer for a long term lease and development thru public bidding. Under the plan, the winning bidder/developer will develop the property into a mixed-use type of development in accordance with Quezon City Central Business District Zoning, including the construction of an SSS Office Building based on minimum specifications, as mode of rental payment to SSS for the use of the property. As further represented, under your existing Policy Guidelines for the Lease of Investment Properties and Real and Other Properties Acquired, the SSS may lease-out its real estate properties either thru bidding or direct negotiation, depending on the amount of the contract, at a rental rate most advantageous to the SSS. However, the Guidelines is not clear on other mode of rental payment that the SSS may accept such as payment in kind (e.g., building, property) instead of recurring cash. Hence, this request for opinion.

We wish to clarify that RA 9184, the Government Procurement Reform Act, and its 2016 revised Implementing Rules and Regulations (IRR) apply to the procurement of infrastructure projects, goods, and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including Government-Owned and/or -Controlled Corporations (GOCCs) and Local Government Units (LGUs).¹

Procurement is defined as the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity.² 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 present procurement law.³ In a previous opinion⁴, we clarified that there are two

¹ Section 4 of RA 9184 and its IRR.

² Section 5(n) of RA 9184.

³ NPM No. 141-2004 dated 5 November 2004.

⁴ NPM No. 23-2016 dated 23 March 2016

(2) important elements to be considered in determining whether an activity is procurement that is covered by 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.

Based on the foregoing, if the activity does not involve acquisition of goods, consulting service, and contracting for infrastructure projects using public funds, the same is not considered procurement under RA 9184. Pointedly, Section 4.5(c) of the 2016 IRR of RA 9184 specifically provides that “lease of government-owned property as lessor for private use” is not considered procurement activity covered by RA 9184 and its 2016 Revised IRR. Considering that the SSS project involves lease of government-owned property for private use, RA 9184 and its 2016 IRR shall not apply to the proposed long term lease and development.

At this juncture, we wish to refer to the following references, which may find application to SSS’s proposed project, thus:

1. Executive Order No. 301, dated 26 July 1987 and its implementing guidelines for the rules and procedures for leasing out government properties;
2. RA 6957, as amended by RA 7718 , for lease out undertakings that require infrastructure or development projects; and
3. Revised Joint Venture Guidelines issued by the National Economic and Development Authority in May 2013, in the event the agreement would entail sharing of profits by the joint-venture partners.

We note, however, that one of the modes of rental payment for the SSS proposed project is through cash, which may be considered as forming part of public funds. Thus, if the cash rental already forms part of public funds, its subsequent use for the procurement of an infrastructure project, or even goods or consulting services, shall be covered by RA 9184 and its 2016 IRR.

In sum, we are of the view that since long term lease and development of a government-owned property for private use is not considered a procurement activity, thus, it is beyond the ambit of RA 9184 and its 2016 IRR. Should SSS opt for cash as mode of rental payment, the subsequent use of such cash rentals, as public funds, for the procurement of goods, infrastructure project or consulting services shall be covered by RA 9184 and its 2016 Revised IRR.

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,


DENNIS S. SANTIAGO
Executive Director V

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