

NPM No. 108-2016

6 December 2016

MS. ELENITA L. SAWAN
BAC Chairman
MUNICIPALITY OF TRINIDAD
Trinidad, Bohol

Re: Applicability of Republic Act No. 9184 in the River Rehabilitation Project with “Zero” ABC

Dear Ms. Sawan:

This refers to your letter requesting our opinion whether or not Republic Act No. (RA) 9184 is applicable in the river rehabilitation project in your municipality which will entail no cost on the part of the municipality.

It was disclosed in your letter that the Municipality of Trinidad proposed to rehabilitate the Ipil River without cost on the part of the municipality. Further, it was mentioned that the dredged material shall become the property of the contractor and other arrangements with the contractor were set. There were also consultations made as to whether RA 9184 will apply in this particular project and varying opinions were rendered on the matter at hand. Hence, this request.

We had the occasion to explain in an earlier opinion¹ that if an acquisition does not involve expenditure of funds in relation to an identified appropriation, RA 9184 and its revised IRR do not apply. In line with this, Section 4.4 of the 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, except those portions financed by the government.

In case of projects where the government entity partners with the private sector entity, where the latter shoulders the cost or where the former is set to earn or profit rather than spend public funds, commonly termed as Public-Private Partnership (PPP), it is advisable to look into the applicability of the BOT Law.

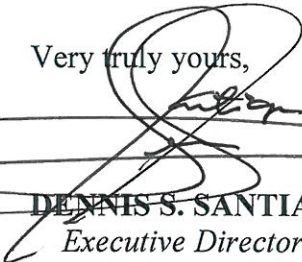
Also, Section 35 of the 1991 Local Government Code (LGC) provides that local government units may enter into joint ventures and such other cooperative arrangements with the private sector to engage in the delivery of certain basic services, capability-building and livelihood projects, and to develop local enterprises designed to improve productivity and

¹ NPM Nos. 171-2015 dated December 29, 2015 and 129-2012 dated October 16, 2012

income, diversify agriculture, spur rural industrialization, promote ecological balance, and enhance the economic and social well-being of the people. Thus, we also recommend for the local government unit to look into the applicability of the relevant provisions of the LGC in case it enters into a joint venture with the project proponent.

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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