

**NPM No. 119-2016**

6 December 2016

**ATTY. LEILANI D. CAPULE**  
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**DEVELOPMENT BANK OF THE PHILIPPINES (DBP)**  
Sen. Gil J. Puyat Avenue cor. Makati Avenue,  
Makati City 1200

**Re: Classification of Procurement**

Dear SAVP Capule:

This refers to your letter requesting our opinion on determining whether your proposed procurement of operational risk information system is to be classified as procurement of goods or procurement of consulting services.

As represented, you have suggested parameters to determine the classification of your procurement project. Accordingly, if the software is off-the-shelf and is subject to minimum customized modifications, it can be regarded as procurement of goods; but if it is subject to major customized modifications; the procurement can be regarded as consulting services. In this regard, you are inquiring about the guidelines to be followed in determining whether the customized modification is minimum or major. Hence, this request for opinion.

We note that the request for the determination on whether a customized modification is minimum or major is for the ultimate purpose of determining the classification of your procurement project. On this note, we wish to inform you that it is the Procuring Entity (PE) that is in the best position to determine the correct classification of its procurement based on its identified needs, guided by the parameters and conditions in the relevant provisions of Republic Act (RA) No. 9184 and its 2016 Revised Implementing Rules and Regulations (IRR) on what should be considered as goods, infrastructure project, and consulting services.<sup>1</sup>

For your guidance, we wish to inform you that Sections 5(i) and (r) of the 2016 Revised IRR of RA 9184 provide for the categorical definition of the terms consulting services<sup>2</sup> and goods<sup>3</sup>, respectively. The demarcation line separating the procurement of

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<sup>1</sup> NPM No. 138-2013 dated 27 December 2013.

<sup>2</sup> **Consulting Services.** Refer to services for infrastructure projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies.



consulting services from the procurement of goods is the requirement for an adequate external technical and professional expertise that are beyond the capability and/or capacity of the procuring entity to undertake. Accordingly, if a procurement requires such adequate external technical and professional expertise, the procurement may be classified as procurement of consulting services; otherwise, the procurement may be considered simple services classified as goods procurement.

Further, Section 5(aa) of the 2016 Revised IRR of RA 9184 provides guidance in classifying procurement activities involving mixed procurements. Whether an intended procurement is in the nature of goods or consulting services, the issue necessarily involves the determination of the primary purpose or intention for which the contract is sought to be undertaken. While the procurement may have been conceived for a number of purposes or uses, that which is primary or foremost shall dictate the identification of its true nature.<sup>4</sup>

In this regard, it is our considered view that the determination of whether a customized modification needed for a software is minimum or major for the ultimate purpose of determining the classification of a procurement project, depends on the identified needs of the procuring entity taking into consideration the relevant provisions of RA 9184 and its 2016 Revised IRR. Consequently, if a procurement requires adequate external technical and professional expertise that are beyond the capability and/or capacity of the procuring entity to undertake, the procurement may be classified as procurement of consulting services; otherwise, the procurement may be considered simple services classified as goods procurement. Further, in case of mixed procurement (partly goods and partly consulting services), that which is the primary or foremost purpose shall dictate the cadence in identifying the true nature of the procurement.

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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<sup>3</sup> **Goods.** Refer to all items, supplies, materials and general support services, except Consulting Services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term “related” or “analogous services” shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity.

<sup>4</sup> NPM No. 029-2008 dated 23 September 2008.