



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 10-2014

31 March 2014

MR. EDUARDO M. CHU

General Manager

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (PFDA)

PCA Annex Building, Elliptical Road,
Diliman, Quezon City

Re: Leasing-out of Fish Port Facilities

Dear GM Chu:

This is in response to your letter dated 13 January 2014 seeking clarification on the applicability of Republic Act No. (RA) 9184 to PFDA's operational undertaking of leasing out fish port facilities; vacant real estate within port complexes; and ice plant and cold storage facilities to private entities.

As represented, the PFDA is a national government entity with corporate powers created by virtue of Presidential Decree No. 704, as amended by Executive Order No. 772. It is mandated to develop, manage, and operate regional fish port complexes, ice plant and cold storages, including municipal fish ports. In line with its corporate functions, the PFDA generates revenues from collecting port fees, and leasing out facilities as well as industrial and commercial lands within its ports for private use. The revenues generated from these port charges and leases are utilized to finance the agency's maintenance and operating expenses. However, the governing board of the PFDA raised the possible applicability of RA 9184 and its associated guidelines, namely, Implementing Guidelines on the Lease of Privately-Owned Real Estate and Venue¹, Guidelines on Multi-Year Contracts for the Procurement of General Support Services², and Contract Implementation Guidelines for the Procurement of Infrastructure Projects³, to its leasing out undertaking. It is in this context that you are requesting clarification on the applicability of RA 9184 to PFDA's leasing out of port facilities, vacant real estate, and ice plant cold storage facilities to the private sector.

As discussed in a previous opinion⁴, RA 9184 and its associated rules would apply in all cases where public funds are to be allocated and utilized for government procurement activities. In other words, 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

¹ GPPB Resolution No. 08-2009 dated 3 November 2009.

² GPPB Resolution No. 24-2007 dated 28 September 2007.

³ Annex E of the IRR of RA 9184.

⁴ NPM No. 155-2012 dated 21 December 2012.

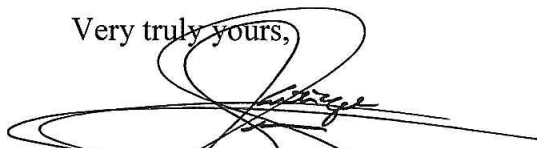
procurement law.⁵ Conversely, if the government transaction or activity does not involve use of public funds, such transaction or activity will not be covered by RA 9184 and its Implementing Rules and Regulations (IRR).

Section 2 of the Implementing Guidelines for Lease of Privately-Owned Real Estate and Venue⁶ categorically states that it shall not apply to lease of government properties for private use. Transactions involving lease of government properties for private use are covered by Executive Order No. 301, series of 1987 (EO 301).

Based on the foregoing, we are of the view that as long as lease out undertakings of PFDA's fish port facilities do not involve expenditure of public funds for the procurement of goods, works and consulting services, RA 9184, its IRR, and its associated rules will not apply. We respectfully refer to EO 301 and its implementing guidelines for the rules and procedures for leasing out government properties. We likewise respectfully suggest looking into the applicability of RA 6957, as amended by RA 7718⁷, for lease out undertakings that require infrastructure or development projects in connection with PFDA's mandate to manage, operate, and develop regional commercial fish port complexes and for the development of the fishing industry. Finally, PFDA may look into the applicability of the Revised Joint Venture Guidelines issued by the National Economic and Development Authority in May 2013.

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

⁶ GPPB Resolution No. 08-2009 dated 3 November 2009.

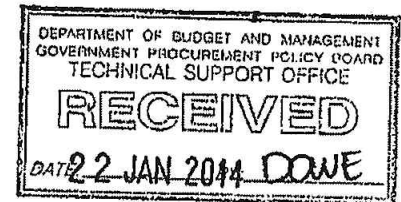
⁷ An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and For Other Purposes.



Republic of the Philippines
DEPARTMENT OF AGRICULTURE
PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY
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January 13, 2014



Atty. Dennis S., Santiago
Executive Director III
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City

Dear Dir. Santiago:

Per the directive of the PFDA Governing Board, we wish to seek clarification from the GPPB on the applicability of the Procurement Law to certain undertakings of our Agency.

The Philippine Fisheries Development Authority (PFDA) is the fisheries infrastructure arm of the Department of Agriculture. Our Agency is a national government entity with corporate powers created by virtue of P.D. 704 as amended by E.O. 772. Per its mandate, the PFDA develops (constructs), manages and operates regional fish port complexes, ice plant and cold storages, and municipal fish ports (on selective scheme).

To date, the PFDA is managing eight (8) regional fish port complexes located in Navotas City, Sual (Pangasinan), Lucena City, Camaligan (Camarines Sure), Iloilo City, Davao city, General Santos City and Zamboanga City. One (1) municipal fish port, in Infanta (Quezon) is under a joint management scheme with the local government. On the other hand, the PFDA has seven (7) Ice Plant and Cold Storage (IPCS) facilities being operated by the private sector thru a lease arrangement with PFDA.

Having a corporate function, the PFDA generate revenues from the operation of these fish ports and IPCS projects by collecting port fees and charging lease rentals. Rentals are imposed for the lease of port facilities like refrigeration, cold storage rooms, market halls as well as industrial and commercial lands inside said fish ports and IPCS by the private sector who are mostly fish processors, fish traders, fishing boat operators, petroleum companies, ship yard operators, and the like. From a short term of two (2) years, the PFDA, as the lessor, grants every port clientele (the lessee) a lease contract to as long as twenty five (25) years, depending on the amount of investment of the latter. Revenues generated from these port charges and leases/rentals are utilized to finance PFDA's expenses in operating, maintaining and further modernizing these vital post-harvest infrastructures.

