



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

NPM No. 50-2013

26 June 2013

HON. CELIA C. KING
Deputy Commissioner
BUREAU OF INTERNAL REVENUE (BIR)
Agham Road, Diliman, Quezon City

Re : Concessionaire for the Executive Lounge of the BIR

Dear Deputy Commissioner King:

We respond to your letter seeking clarification on whether the selection of a concessionaire is covered by Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR).

As represented, the BIR is in the process of selecting a concessionaire that will be providing BIR employees, as well as taxpayers, with clean, nutritious, and reasonable/affordable food, and will be paying BIR for the lease of its Executive Lounge.

Section 5(n) of RA 9184 defines Procurement as the acquisition of goods, consulting services, and contracting for infrastructure projects by the procuring entity. Although the definition of Procurement includes lease of goods and real properties, such lease contemplates a transaction whereby the government spends public funds in exchange for the use of the identified property.

The agreement being contemplated by BIR with the concessionaire entails the payment by the latter of a consideration for the use of the Executive Lounge, which amounts to a transaction often classified as leasing out of a government-owned building or real property for private use. In a previous opinion¹ issued by this office, we held the following view on the matter:

Verily, leasing out of government-owned properties does not involve the acquisition of any particular equipment, material, or personal property or a contractual service such as janitorial, security and related services. Moreover, this kind of transaction does not involve any construction, improvement, rehabilitation or other activity which would fall under the definition of the term "civil works," nor a contract for the performance of services such as advisory, review, design, management, or other service which would fall under the concept of "consulting services."

¹ Non Policy Matter No. 43-2004 dated 30 March 2004.

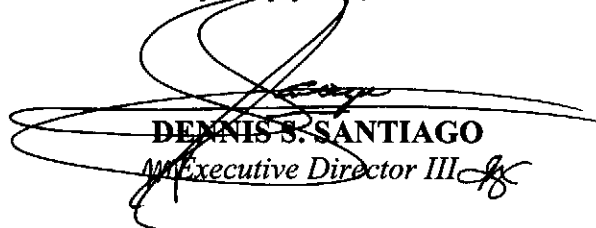
Accordingly, by the nature and peculiarity of this government contract, leasing out of government building remains to be governed by Executive Order No. 301 ("E.O. 301") particularly Section 7 thereof *x x x*.

In another related opinion², we clarified that while the definition of procurement also includes the lease of goods and real estate, the Government Procurement Policy Board expressly stated in its Implementing Guidelines for Lease of Privately-Owned Real Estate³ that said guidelines will only apply to lease of privately-owned real estate by government agencies for official use.

In this regard, we wish to reiterate the view that transactions where a government agency leases out its real property for private use, such as in the case of a canteen or food concessionaire for the Executive Lounge of BIR, are governed by Executive Order 301, Series of 1987 and its associated guidelines.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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² Non Policy Matter No. 12-2008 dated 24 July 2008.

³ Implementing Guidelines for Lease of Privately-Owned Real Estate as approved and adopted by the GPPB through Resolution No. 19-2007 dated 29 June 2007.