

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD

Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax.: (02) 735-4962, (02) 736-5758

TSO NPM No. 06-2004

January 6, 2004

Atty. NOEL Z. DE LEON
General Counsel
National Transmission Corporation

**Re : Request for Clarification on the Procurement of
Remote Terminal Units (RTUs) for Mindanao under
World Bank Guidelines**

Dear Atty. De Leon :

This refers to your letter dated December 11, 2003, which we received today requesting for clarification on this issue:

Whether or not the National Transmission Corporation (TransCo) can proceed with the award of contract procured under the World Bank Guidelines with local funds to be utilized as funding for the implementation of the contract.

This request was made in connection with the procurement of Remote Terminal Units (RTUs) for Mindanao.

Governing Law and Rules on Domestically Funded Government Procurement Activities

With the enactment of Republic Act No. 9184 (R.A. 9184,) otherwise known as the Government Procurement Reform Act, which took effect on January 26, 2003, all procurement activities of all branches and instrumentalities of government, its department, offices and agencies, including government-owned and/or controlled corporations and local government units are now subject to a uniform set of rules and

procedures, thus promoting transparency, accountability, equity, efficiency and economy in the government procurement process.

R.A 9184 is further implemented by its Implementing Rules and Regulations Part-A (IRR-A), which took effect on October 8, 2003. Section 1 thereof explicitly provides:

“The Implementing Rules and Regulations (IRR) Part A, hereinafter called “IRR-A” is promulgated pursuant to Section 75 of Republic Act No. 9184 (R.A. 9184), otherwise known as the “Government Procurement Reform Act” (GPRA), for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the government. This IRR-A shall cover all fully domestically funded procurement activities from procurement planning up to contract implementation and termination xxxx” (Underscoring supplied)

Apropos the foregoing, we agree with TransCo Management’s position that local funds cannot be used to finance contracts procured using the guidelines other than those that are prescribed by R.A. 9184 and its IRR-A. We are in full accord with TransCo Management’s recommendation to cancel the award of the contract and to conduct new bidding.

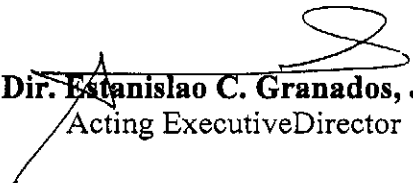
On account of the cancellation of the funding by the World Bank for the supply and delivery of RTUs for Mindanao, the procurement proceedings under the World Bank guidelines should be considered null and void due to this supervening event. Since it is now the intention of TransCo to fund the project from local sources, the procurement of RTUs for Mindanao should be undertaken under the R.A. 9184 and its IRR-A from procurement planning up to contract implementation and termination. This is in consonance with express provision of IRR-A of R.A. 9184 and the governing principle on government procurement, which is a streamlined procurement process that uniformly apply to all government procurement.

It is thus legally impermissible to use a different set of procurement rules, particularly the World Bank Guidelines, for domestically funded procurement activities. It must be noted that notwithstanding the ongoing effort to harmonize the Philippine procurement practice with that of the International Financial Institutions, there remains significant differences in the procurement rules and procedure between the Government of the Philippines and the International Financial Institutions. Hence, it is the opinion of this Office that TransCo should re-bid the project under the provisions of R.A. 9184 and its IRR-A.

With the foregoing elucidations, we trust that our opinion has provided TransCo with the needed information relevant to its procurement of RTUs for Mindanao.

Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

Very truly yours,


Dir. Estanislao C. Granados, Jr.
Acting Executive Director