



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

**NPM No. 77-2014**

21 October 2014

**MS. LILIAN G. SALONGA**

*Officer-In-Charge*

**PHILIPPINE CONTRACTORS ACCREDITATION BOARD (PCAB)**

5F, Executive Building Center,

369 Sen. Gil J. Puyat Ave.,

Makati City 1209

**Re: Classification of Procurement**

Dear Ms. Salonga:

This refers to your letter dated 01 September 2014 furnishing our office with a copy of letter from Comm Builders and Technology Phils. Corp. (CB&T). As we noted, the letter of CB&T involves a question regarding the proper classification of procurement project (whether goods or infrastructure projects), particularly the "Maintenance of the LRT Line 2 System", and the submission of a PCAB License as part of the eligibility requirements.

At the outset, we wish to inform you that we have no jurisdiction to rule over actual controversies with regard to the conduct of bidding, since the office has no quasi-judicial functions or investigatory powers under the law. Moreover, we adhere to the position that apart from courts having actual jurisdiction over the subject matter of a case, we cannot, nor any other government agency, authority, or official, encroach upon or interfere with the exercise of the functions of the BAC, since these duties and responsibilities fall solely within the ambit of its authority and discretion sanctioned by law.<sup>1</sup> In this wise, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

We would like to emphasize that the Procuring Entity (PE) is in the best position to determine the correct classification of its procurement based on its identified needs, with a concomitant duty that it be guided by the parameters and conditions in the relevant provisions<sup>2</sup> of Republic Act No. (RA) 9184 and its revised Implementing Rules and Regulations (IRR) on what should be considered as goods, infrastructure project, and consulting services.<sup>3</sup> The decision of the PE in the determination of the nature of procurement necessarily carries with it the decision to use the applicable rules for that particular procurement type.

<sup>1</sup> NPM No. 46-2013 dated 11 June 2013.

<sup>2</sup> Sections 5(r) and (u) of the IRR of RA 9184 provide for the categorical definitions of goods and infrastructure projects, respectively while Section 5(aa) of the same IRR provides guidance in classifying procurement activities involving mixed procurements.

<sup>3</sup> NPM No. 138-2013 dated 27 December 2013.

It is important to note the type of procurement of each project because, while there are similar rules and requirements for each type of procurement, especially for goods and infrastructure projects, there are still requirements and rules that are applicable only to a particular type. As such, the revised IRR of RA 9184 has some provisions that are particular to infrastructure projects and other provisions that are applicable only to the procurement of goods or consulting services.<sup>4</sup>

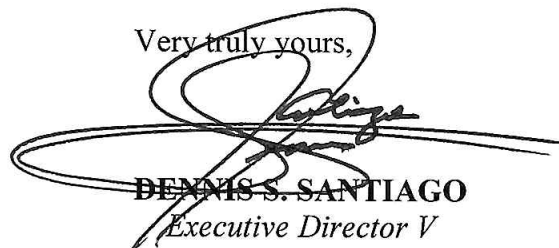
Under Section 23.1(a) of the revised IRR of RA 9184, a valid PCAB license and registration shall only be required in the case of procurement of infrastructure projects. Consequently, the imposition of PCAB license as an eligibility requirement will depend on whether the PE classifies its procurement as an infrastructure project or not. If the procurement is classified as an infrastructure project, a valid PCAB license and registration for the type and cost of the contract to be bid must be submitted by the bidders as part of the eligibility requirements. On the other hand, such eligibility requirement need not be submitted for the procurement of goods and consulting services.

It must also be noted that for any question regarding the decision of the BAC at any stage of the procurement process, the protest mechanism provided in Rule XVII of the revised IRR of RA 9184 may be utilized to protect the rights of a bidder recognized under the procurement law and its associated rules and regulations.

All told, the classification of procurement involving “Maintenance of the LRT Line 2 System” is incumbent upon the determination of the Procuring Entity, subject to such guideposts and parameters provided under RA 9184 and its IRR, specifically Section 5. On the other hand, a bidder who intends to question the decision of the BAC at any stage of the procurement process shall utilize the protest mechanism under the revised IRR of RA 9184.

We hope 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 you have further questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director V*

11/13

---

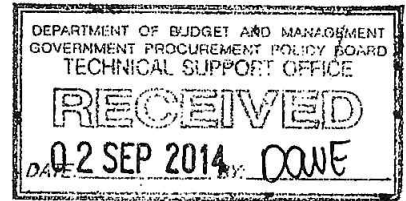
<sup>4</sup> *Department of Foreign Affairs and Bangko Sentral ng Pilipinas v. Hon. Franco T. Falcon*, G.R. No. 176657, September 1, 2010.

12/16/14



01 September 2014

GOVERNMENT PROCUREMENT POLICY BOARD-TSO  
Unit 2506, Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City



Attention: **ATTY. DENNIS S. SANTIAGO**  
Executive Director V


Gentlemen;

Forwarding herewith is a letter of Comm Builders & Technology Phils. Corp. requesting for an opinion regarding the bidding on "**Maintenance of the Manila LRT Line 2 System**".

The PCAB Board resolved to refer the query to the Government Procurement Policy Board -TSO, being the proper authority to render an opinion on the above query.

Thank you.

Very truly yours,

  
**LILIAN G. SALONGA**  
Officer in Charge

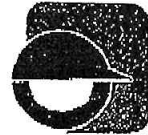
Sir,  
letter of CB & T, as endorsed by PCAB  
inquiring whether a PCAB license is necessary  
for the maintenance of MRT line 2  
system [classification of procurement;  
goods or M&M] *11 sep 14*  
*See Henry*  
Please prepare *-Karen*  
OPINION. *for DSS*

Enabling Business, Empowering Consumers



**PHILIPPINE CONTRACTORS ACCREDITATION BOARD**  
5F, Executive Building Center, 369 Sen. Gil J. Puyat Ave., Makati City 1209, Philippines  
Telephone: (632)896-4256 Telefax: (632)895-4220 E-mail: pcabphil@yahoo.com





- 2 -

media advertisements, health maintenance services, and other services essential to the operation of the procuring entity." (Rule I, Sec. 5, parag. r);

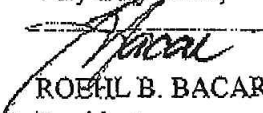
while--

"Infrastructure Projects. Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects. . . . ." (Rule I, Sec. 5, parag. u). (Underscoring supplied)

It is our belief that the Maintenance of the LRT Line 2 System mentioned above falls under procurement of infrastructure projects and NOT procurement of goods. This contention is validated by above-cited provisions of R.A. 9184, as underscored. This being the case, we further believe that all prospective bidders in the aforementioned project should be holders of valid PCAB License, besides the fact that the concerned project is a government undertaking whereby PCAB requirement is a must.

Thank you very much for the immediate attention on this matter.

Very truly yours,

  
ROEHL B. BACAR  
President