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REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Mezzanine 125, Mabini Hall, Malacañang, Manila

Telefax Nos.: (02) 735-4962 / (02) 736-5758

NPM No. 09-2004

February 6, 2004

CARLOS F. GARCIA

Major General AFP

Deputy Chief of Staff for Comptrollership, J6

Armed Forces of the Philippines

Department of National Defense

Re : Issuance of a Letter of Credit for Foreign Manufacturers or Suppliers

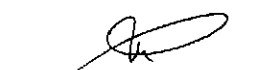
Dear Maj. Gen. Garcia:

This refers to your letter dated November 20, 2003, which we received on the same date, requesting for clarification on whether or not Section 42.5 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184") prohibits the issuance of a letter of credit in favor of foreign manufacturers or suppliers.

A reading of Sec. 42.5 of IRR-A of R.A. 9184 will reveal that the prohibition on the issuance of a letter of credit is not allowed to be issued either in favor of the following: (i) a Philippine entity; or (ii) any of its foreign manufacturers or suppliers. Sec. 42.5 of IRR-A of R.A. 9184 specifically provides as follows:

No procuring entity shall be allowed to issue a letter of credit **in favor of a Philippine entity** or to **any of the latter's foreign manufacturers or suppliers**, with respect to any procurement. (Emphasis supplied)

The prohibition against the issuance of a letter of credit in favor of a Philippine entity's foreign manufacturer or supplier contemplates a situation where the Philippine entity acts as the distributor or local supplier of the foreign manufacturer or supplier, where the Philippine entity acts as the agent, and the foreign manufacturer or supplier is the principal.


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PSSD, QJ6
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As can be gleaned from the above-cited provision, the issuance of a letter of credit in favor of a foreign manufacturer or supplier is not prohibited, what the provision disallows is the issuance of a letter of credit in favor of a foreign manufacturer or supplier of a Philippine entity.

A letter of credit is recognized as a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying. (See Bank of America, NT & SA v. Court of Appeals, G.R. No. 105395, December 10, 1993) Being a product of international commerce, it is only imperative that the issuance of a letter of credit in favor of foreign manufacturers or suppliers be considered as an acceptable mode of payment, especially in cases of foreign procurement by the Government. However, it should be noted that a letter of credit may only be called upon after the final acceptance has been issued by the procuring entity.

In view of the foregoing, we are of the opinion that Sec. 42.5 of IRR-A of R.A. 9184 does not prohibit the issuance of a letter of credit in favor of foreign manufacturers or suppliers but is limited only to foreign manufacturers or suppliers of a Philippine entity.

We trust that this clarifies matters.

Very truly yours,


ESTANISLAO C. GRANADOS JR.
Acting Executive Director