

NPM No. 09-2008

1 July 2008

HON. LAWRENCE LL. CRUZ

Mayor

CITY OF ILIGAN

Attention : **ARCHT. GIL R. BALONDO**
Chairman, Bids and Awards Committee

Re : **Splitting of Contracts**

Dear Sir:

In letters dated 23 June and 8 May 2008, your good office requests for opinion on whether the separation of the procurement of pipes (goods) from civil works (infra) in the implementation of a water supply project constitutes splitting of contracts as prohibited under Section 54 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184.

We concur with the opinions of Ms. Melinda C. Cruz, Acting Head, PMD-2 of the Land Bank of the Philippines,¹ and Mr. Amoran M. Banocag, State Auditor IV of the Commission on Audit,² that the proposed scheme does not constitute splitting of contracts. Under Section 54.1 of the IRR-A, splitting of contracts means the division or breaking up into smaller quantities and amounts, or dividing contract implementation into different phases or sub-contracts, for the purpose of evading or circumventing the requirements of R.A. 9184 or its IRR-A, especially the necessity of public bidding. Since both procurement of pipes and civil works will be conducted through public bidding, their separation does not appear to be for the purpose of circumventing the requirements of R.A. 9184 nor its IRR-A

We trust that this provides sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III

¹ In letter dated 31 March 2008 addressed to the Hon. Lawrence LL. Cruz, Mayor of Iligan City.

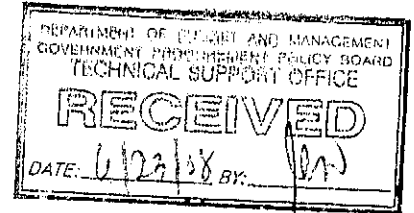
² In letter dated 5 May 2008 addressed to the Hon. Lawrence LL. Cruz, Mayor of Iligan City.



REPUBLIC OF THE PHILIPPINES
City of Iligan

BIDS AND AWARDS COMMITTEE

Website: www.iligan-city.gov.ph Email: bas@iligan-city.gov.ph Telefax: 063 2253034



Sec. ROLANDO G. ANDAYA, Jr.
Chairperson
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
1106 Pasig City

Attention: **Emiluisa Peñano**
Deputy Executive Director
GPPB Technical Support Office

(Handwritten note: Letter to Mr. Andaya re: Procurement of goods for expansion of the City's Water Supply System Project)

Dear Secretary Andaya:

This is to follow up our request for your opinion on the separation of the procurement of goods from infrastructure for Iligan City's Development and Expansion of the City's Water Supply System Project.

To date, the project has just past the Opening of Bids for Civil Works last June 13, 2008. Opening of bids for Goods, on the other hand, is slated on June 27, 2008. After the bid evaluation period, the Bids and Awards Committee intends to post-qualify the submitted bids on June 28-July 4, 2008 for civil works, and July 12-18, 2008 for goods.

With the procurement process in running, it is vital that we receive your interpretation/opinion on the matter the soonest possible time for our guidance.

Thank you very much.

Very truly yours,

Archt. GIL R. BALONDO
City Planning & Development Coordinator



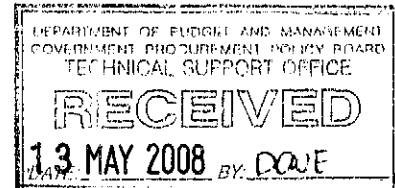
REPUBLIC OF THE PHILIPPINES
City of Iligan



BIDS AND AWARDS COMMITTEE

Website : www.iligan-city.gov.ph Email : bac@iligan-city.gov.ph Telefax : 063 2253034

May 8, 2008



Sec. Rolando G. Andaya, Jr.

Chairperson

Government Procurement Policy Board (GPPB)

Unit 2506, Raffles Corporate Center

F. Ortigas Jr. Road, Ortigas Center

Pasig City 1106

Telefax (632) 900-6741 to 44

Enrico,

*Let's prioritize pls.
begin in my behalf.*

ff 5/13/08

Subject : Requesting for GPPB's Interpretations on Separate Procurement of Goods (Pipes) from Civil Works (Infrastructure)

Sir;

Greetings!

The Local Government Unit (LGU) of Iligan City has availed a loan from World Bank thru Land Bank of the Philippines (LBP) under the Support for Strategic Local Development & Investment Project (S2LDIP) for the Development and Expansion of the City's Water Supply System Project.

The Project Implementation Unit (PIU) recommended a separate procurement of goods (pipes) from civil works (infrastructure) and already submitted the required bidding documents to the Local Bids and Awards Committee (BAC) where the undersigned is the chairman. During the pre-procurement conference deliberations today, the committee members and the end-user were stalled on the propriety and legality of the separate procurement.

However, the PIU strongly defended the scheme alleging that it is most advantageous to the LGU with a substantial favorable cost impact and no procedural purchase limit was circumvented or evaded because this will be done in an open and competitive bidding. They have also secured favorable opinions (please see attached) from World Bank, Land Bank of the Philippines and the State Auditor of the city that such separation is allowed.

To settle the issue, we have agreed to refer this matter to your good office the authority of policy-making board of all government procurements, whether such action of separating the procurements of pipes or goods from works or infra is not tantamount to "Splitting of Government Contracts" prohibited under Sec. 54, Implementing Rules and Regulations of RA 9184 etc.

Considering our 30-day bidding period, we respectfully request to have your interpretation not later than June 9, 2008.

Thank you for your prompt action of this request in the interest of public service.

Very truly yours,



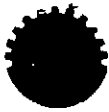
ARCHT. GIL R. BALONDO
Chairman, Bids & Awards Committee

Noted by:



LAWRENCE LL. CRUZ
City Mayor

Cc: Hon. Moises G. Dalisay, Jr.
City Councilor
Engr. Wilfredo R. Bacareza
Project Manager, PIU
File



LAND BANK OF THE PHILIPPINES

Official Depository Bank of the Republic of the Philippines

31 March 2008

HON. LAWRENCE LL. CRUZ

City Mayor
City of Iligan

Subject : **Iligan City Waterworks System Project**
Support for Strategic Local Development & Investment Project (S2LDIP)
Loan No. 4833-PH

Dear Mayor Cruz:

We acknowledge with thanks the receipt of your letter dated 24 March 2008, (received by LBP on 28 March 2008). Below are our response to your queries:

Item 1: Owner Supplied Material. This does not constitute splitting of contract considering that procurement of pipes & fittings, and procurement of civil works shall be conducted using competitive bidding. Splitting of contract is when one large contract is divided into several smaller contract packages to favor few contractors (i.e. breaking the laying of transmission & distribution pipelines of The Iligan Water Supply Development Project into several smaller contract packages; breaking the concreting of road into several smaller contract packages, etc.).

Item 2: Ceiling for Bid Amounts. The World Bank Procurement Guidelines shall be applied for the procurement of pipes & fittings, and procurement of civil works, since the Iligan Water Supply Development Project is enrolled under an Official Development Assistance (ODA) funded project, specifically the World Bank-assisted S2LDIP.

As regards your other query, whether the bidder can submit his bid more than the Approved Budget for Contract (ABC) or not. Section 2.53 of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits dated May 2004 states that:

"Bid evaluation for works shall be strictly in monetary terms. Any procedure under which bids above or below a predetermined assessment of bid values are automatically disqualified is not acceptable."

Item 3a: Eligibility Checking. Pre-qualification or screening of prospective bidder/s shall not be applied to any procurement undertaken under the World Bank assisted S2LDIP. Instead the Lowest Calculated Responsive Bidder (LCRB) shall be subjected to post-qualification to determine eligibility. Section 1.7 of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits dated May 2004 states that:

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www.landbank.com

"In connection with any contract to be financed in whole or in part from a Bank loan, the Bank does not permit a Borrower to deny pre- or post-qualification to a firm for reasons unrelated to its capability and resources to successfully perform the contract; nor does it permit a Borrower to disqualify any bidder for such reasons. Consequently, Borrowers should carry out due diligence on the technical and financial qualifications of bidders to be assured of their capabilities in relation to the specific contract."

Item 3b: The Government Procurement Policy Board (GPPB) has not issue the Implementing Rules & Regulations for foreign-funded procurement activities (IRR-B). In the absence of IRR-B, the IRR-A shall be used in all procurement of the national government, its departments, bureaus, offices, and agencies, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions and local government units. Hence, if there are differences between the IRR-A of R.A. 9184 and the procurement guidelines of the funder (World Bank), the latter shall prevail. Clause 4.2, Section 4 – Scope and Application of IRR-A of R.A. 9184 states that:

"This IRR-A shall apply to the procurement of infrastructure projects, goods, and consulting services by any procuring entity, subject to the provisions of Commonwealth Act No.138, otherwise known as the "Flag Law." Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine Government is a signatory shall be observed."

We hope we have addressed your concerns and hoping for the realization of your water supply project at the soonest possible time.

Very truly yours,


MELINDA C. CRUZ
Acting Head, PMD-2



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Official Depository Bank of the Republic of the Philippines

21 April 2008

HON. LAWRENCE LL. CRUZ

City Mayor

Iligan City, Lanao del Norte

Attention : **Engr. Wilfredo R. Bacareza**
Project Implementation Unit Coordinator
Project Manager

Subject : **Draft Bidding Documents for the Supply & Delivery of Various Sizes of PE 100 HDPE Pipes and Fittings – Iligan City Water Supply Development Project**
Support for Strategic Local Development & Investment Project (S2LDIP)
Loan No. 4833-PH

Dear **Mayor Cruz**:

We would like to inform you that World Bank has issued No Objection for the finalization and publication of the Invitation for Bids (IFB) for the Procurement of Various PE 100 HDPE Pipes and Fittings for The Iligan City Water Supply Development Project, subject to incorporation of the following comments:

1. Please delete the draft General Procurement Notice as there is no need to post another one for this procurement;
2. On the Invitation for Bids (IFB), please insert a new para.1 with the following statement: "This Invitation for Bids follows the General Procurement Notice for this Project that appeared in the Development Business and dgMarket, dated 16 April 2006", and adjust the numbering of the other paragraphs;
3. Please revise the dates indicated in the IFB as the document is finalized based on these comments;
4. Please review and confirm the appropriateness of the qualifications criteria indicated in the IFB and in Section III of the document, considering that the bidding will be done through International Competitive Bidding (ICB) procedures, and that foreign suppliers can be expected to participate;
5. We find the amount of ₱ 45,000.00 fee indicated in para. 6 of the IFB to be unreasonably high and may discourage firms to participate in the bidding. We encourage you to reconsider the amount you require for the bidding documents;

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6. In Section IV – Bidding Forms, please delete the bracketed wordings in italics when the document is finalized in order for the bidders to have a clean copy to work on in submitting their bids;
7. In Section V – Eligible Countries, please delete items (a) and (b) under para. 2, as well as the “; and ” at the end of para. 2;
8. In Section VI – Schedule of Requirements, Sub-section 5, Inspection and Tests, please delete the bracketed wording in italics as the list has been provided already;
9. In Section VIII – Special Conditions of Contract, please include the introductory paragraph which is meant as informatory guide to the bidders;
10. Also in Section VIII, page 107, please delete the section of “ Attachment: Price Adjustment Formula” as this is not applicable to this contract anyway.

Please note that the Invitation for Bids (IFB) should be published in a newspaper of national circulation, in PhilGEPS, and in dgMarket and UNDB. In connection with this publication in dgMarket and UNDB, the World Bank will make the necessary arrangement in your behalf. Also, please provide us a copy of the final documents prior to publication of IFB in a newspaper of national circulation and make sure that no amendment should be made without approval from the World Bank.

We look forward to receiving a copy of the minutes of bid opening and abstract of bids for our information and reference promptly after the bids are opened.

Thank you and best regards.

Very truly yours,


MELINDA C. CRUZ
Acting Head, PMD2

cc: Cagayan de Oro Lending Center

THE WORLD BANK GROUP
World Bank Office Manila
 Tel. No. (63-2) 637-5855 • Fax (63-2) 917-3050 • Telex No. RCA 248423

FACSIMILE COVER SHEET AND MESSAGE

DATE:	21 April 2008	NO. OF PAGES: 3 (including this page)	MESSAGE NO.:
TO:	Ms. Melinda C. Cruz		FAX NO.: (63-2) 528-8541
Title:	Acting Head, Program Management Department 2		
Organization:	Land Bank of the Philippines		
FROM:	R. Mikami Kariuki		FAX NO.: (63-2) 637-5870
Title:	Task Team Leader		Telephone: (63-2) 637-5855
Dept/Div:	Urban Development Sector Unit		
SUBJECT:	Philippines: Support for Strategic Local Development and Investment Project (Loan No. 4833-PH) Draft Bidding Documents for the Supply and Delivery of Various Sizes of PE 100 HDPE Pipes and Fittings for the Development and Expansion of the Iligan City Water Supply System		

MESSAGE:

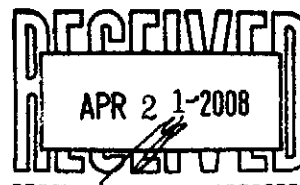
Dear Ms. Cruz,

This is further to our letter of 14 April 2008 regarding the draft bidding documents for the Iligan City Water Supply System Project. We have reviewed the draft bidding documents for the goods component and we have the following comments:

- o/✓ 1. Please delete the draft General Procurement Notice as there is no need to post another one for this procurement;
- o/✓ 2. On the Invitation for Bids (IFB), please insert a new para. 1 with the following statement: "This invitation for Bids follows the General Procurement Notice for this Project that appeared in the Development Business and dgMarket, dated 16 April 2006", and adjust the numbering of the other paragraphs;
- o/✓ 3. Please revise the dates indicated in the IFB as the document is finalized based on these comments;
4. Please review and confirm the appropriateness of the qualifications criteria indicated in the IFB and in Section III of the document, considering that this bidding will be done through International Competitive Bidding procedures, and that foreign suppliers can be expected to participate;
- o/ 5. We find the amount of PHP45,000 fee indicated in para. 6 of the IFB to be unreasonably high and may discourage firms to participate in the bidding. We encourage you to reconsider the amount you require for the bidding documents;
6. In Section IV. Bidding Forms, please delete the bracketed wordings in italics when the document is finalized in order for the bidders to have a clean copy to work on in submitting their bids;

Transmission authorized by:

If you experience any problem in receiving this transmission, inform the sender at the telephone or fax no. listed above.



Ms. Melinda C. Cruz

-2-

21 April 2008

- OK 7. In Section V. Eligible Countries, please delete items (a) and (b) under para. 2, as well as the “; and” at the end of para. 2;
- OK 8. In Section VI. Schedule of Requirements, Sub-section 5. Inspections and Tests, please delete the bracketed wording in italics as the list has been provided already;
- OK 9. In Section VIII. Special Conditions of Contract, please include the introductory paragraph which is meant as an informative guide to the bidders;
- OK 10. Also in Section VIII, page 107, please delete the section of “Attachment: Price Adjustment Formula” as this is not applicable to this contract anyway; and

Based on the information provided, and subject to the incorporation of the above comments, we have no objection to the finalization of the bidding documents, and the publication of the Invitation for Bids in a newspaper of national circulation, in PhilGEPS, and in dgMarket and UNDB. In connection with this publication in the dgMarket and UNDB, please send us a final version of the IFB in electronic format and we will arrange for its publication in behalf of Iligan City.

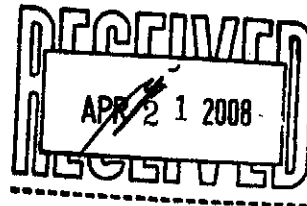
Please note that at the same time of issuance of the documents to potential bidders, a copy should be forwarded to the Bank for our records, and no amendment should be made in the bidding documents without prior approval from the Bank. We look forward to receiving a copy of the minutes of bid opening and abstract of bids for our information and reference promptly after the bids are opened.

With best regards,

Sincerely yours,



R. Mukanti Kariuki
Task Team Leader
Urban Development Sector Unit
Sustainable Development Department
East Asia and Pacific Region





LAND BANK OF THE PHILIPPINES

Official Depository Bank of the Republic of the Philippines

17 April 2008

HON. LAWRENCE LL. CRUZ

City Mayor

Iligan City, Lanao del Norte

Attention : **Engr. Wilfredo R. Bacareza**
Project Implementation Unit Coordinator
Project Manager

Subject : **Draft Bidding Documents for the Procurement of Civil Works –
Iligan City Water Supply Development Project**
Support for Strategic Local Development & Investment Project (S2LDIP)
Loan No. 4833-PH

Dear **Mayor Cruz**:

We would like to inform you that World Bank has issued No Objection for the finalization and publication of the Invitation for Bids (IFB) for the Procurement of Civil Works for The Iligan City Water Supply Development Project, subject to incorporation of the following comments:

A. Invitation for Bids

- 1) Please revise to supply new dates as the documents are finalized based on this response;
- 2) Line 3: In line with the requirements of RA 9184 on the publication of the ABC, please review as necessary to supply the information which should be indicated as estimated project cost (EPC) instead of the ABC;
- 3) Line 6: Please review and revise the PhP40,000 fee which appears unreasonably high and which may discourage firms to submit bids;
- 4) Line 6: Please review and revise the last sentence to specify the inclusive dates when bidding documents will be made available rather than just the end date;

B. Bid Data Sheet

- 5) As in Line 1 above, please revise to supply new dates as the documents are finalized based on this response;

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- 6) ITB 12.1: Please delete the provisions in its entirety and replace with the provisions of the PBD applicable to World Bank financed projects which provides "For goods and services that will be supplied from outside the Philippines Bid prices therefore, shall be quoted in United States dollars";

C. Special Conditions of Contract

- 7) As in Line 1 above, please revise to supply new dates as the documents are finalized based on this response;
- 8) GCC 39.1: Please review and revise as necessary to retain the provisions of the PBD applicable to World Bank financed projects which provides "Materials and equipment delivered on the site but not completely put in place shall not be included for payment";
- 9) GCC 40.1: Please review and revise as necessary to provide clear instructions for this clause. As the GCC clause had provided, there shall be monthly statements of the estimated value of the work done hence the revisions should be sufficiently clear for the information of the implementor and the prospective contractor; and,
- 10)GCC 41.2: Please review and revise as necessary to specify the value of retention money (which is between 5% to 10%), and retain the provisions of the PBD applicable to World Bank-financed projects. The clause should thus state: "The amount of retention is ___ percent of the contract value."

Please note that at the same time of issuance of the bidding documents to potential bidders, you should forward to us a copy of the final documents, and no amendment should be made without approval from the World Bank. We will await the related bid evaluation report (BER) and award recommendation.

The comments on the draft bidding documents for procurement of pipes and fittings will be issued as soon as we receive WB's evaluation/review.

Thank you and best regards.

Very truly yours,


MELINDA C. CRUZ
Acting Head, PMD2

cc: Cagayan de Oro Lending Center

*ELYN/HENRY,
pls. handle.*

*fax
millite*

THE WORLD BANK GROUP
WORLD BANK OFFICE MANILA
 23RD Floor Taipan Place, F. Ortigas Ave. formerly Emerald Ave., Ortigas Center,
 Pasig City, Philippines
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FACSIMILE COVER SHEET AND MESSAGE

DATE: April 14, 2008 **NO. OF PAGES:** 2
 (including cover sheet)

TO: Ms. Melinda C Cruz **FAX NO.:** 02-528 8541
 Title: Acting Head, PMD 2,
 Organization: Land Bank of the Philippines

FROM: R. Mukami Kariuki
 Title: Task Team Leader for SSLDIP
 Dept / Div: Urban Development Sector Unit

SUBJECT: Philippines: Support for Strategic Local Development and Investment Project (La 4833-PH)
 Procurement of Works – Draft Bidding Documents for the Iligan City Water System Development
 Project (INFRA-08-002)

MESSAGE:

Dear Ms. Cruz,

We acknowledge receipt of your letter of April 1, 2008 (received by us on April 1) forwarding to the Bank the draft bidding documents for the procurement of goods and works, separately, for the Iligan City Water System Development Project.

We have reviewed your request, and we have the following comments:

A. Invitation to Bid

- 1) Revise to supply new dates as the documents are finalize based on this response;
- 2) Line 3. In line with the requirements of RA 9184 on the publication of the ABC please review and revise as necessary to supply the information which should be indicated as estimated project cost (EPC) instead of ABC;
- 3) Line 6. Please review and revise the PHP 40,000 fee which appear unreasonably high and which may discourage firms to submit bids;
- 4) Line 6. Please review and revise the last sentence to specify the inclusive dates when bidding documents will be made available rather than just the end date;

B. Bid Data Sheet

- 5) As in Line 1 above please revise to supply new dates as the documents are finalize based on this response;
- 6) ITB 12.1. Please delete the provisions in its entirety and replace with the provisions of the PBD applicable to World Bank financed projects which provides "For goods and

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If you experience any problem in receiving this transmission, inform the sender at the telephone or fax no. listed above.

M.C. Cruz

-2-

April 14, 2008

services that will be supplied from outside of the Philippines Bid prices therefore shall be quoted in United States Dollars";

C. Special Conditions of Contract

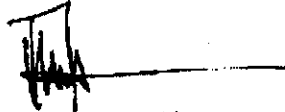
- 7) As in Line 1 above please revise to supply new dates as the documents are finalized based on this response;
- 8) GCC 39.1. Please review and revise as necessary to retain the provisions of the PBD applicable to World Bank financed-projects which provides " Materials and equipment delivered on the site but not completely put in place shall not be included for payment";
- 9) GCC 40.1. Please review and revise as necessary to provide clear instructions for this clause. As the GCC clause had provided there shall be monthly statements of the estimated value of the work done hence the revisions should be sufficiently clear for the information of the implementor and the prospective contractor; and,
- 10) GCC 41.2. Please review and revise as necessary to specify the value of retention money (which is between 5% to 10%), and retain the provisions of the PBD applicable to World Bank-financed projects. The clause should thus state "The amount of retention is ___ percent of the contract value"

Based on the information provided to the Bank, subject to incorporation of the above comments, we have no objection to finalizing the bid documents, publication of the Invitation for Bids (IFB). Please note that at the same time of issuance to potential bidders, you should forward to us a copy of the final documents, and no amendment should be made in the bid documents without approval from the Bank. We will await the related bid evaluation report (BER) and award recommendation.

We will issue a separate response with regard to the draft bidding documents for procurement of pipes and fittings.

Regards.

Sincerely,



R. Mukami Kariuki
Task Team Leader
Urban Development Sector Unit
Sustainable Development Department
East Asia and Pacific Region



Republic of the Philippines
COMMISSION ON AUDIT
City of Iligan

Office of the City Auditor
City Hall, Buhanginan Hills Pala-o, Iligan City

#276-08
E-D

5/7/08
1:40 pm

May 5, 2008

HON. LAWRENCE LL. CRUZ
City Mayor
Iligan City

Subject: Development and Expansion of Iligan City Water Supply Project

Dear Sir:

This acknowledge the receipt of your letter of 22 April 2008 (received by us on April 28, 2008) informing that the City has decided to proceed with the bidding of the above project separately for pipes and fittings (as owner-supplied material), and for civil works, which shall be bid out through open competitive bidding using the World Bank procurement guidelines.

In this level, we share the same view with Ms. Melinda C. Cruz, Acting Head, PMD-2, Land Bank of the Philippines that the proposed scheme does not fall within the ambit of splitting of contract prohibited in Section 11 of Executive Order No. 109-A dated September 18, 2003 because procurement thereof shall be conducted using public bidding. We are also happy to take note of the No Objection Letters by the World Bank to finalizing the bidding documents and publication of the Invitation for Bids. (Letters dated April 14 and 21, 2008, respectively, addressed to the Land Bank of the Philippines).

Anent your request for comment, please be informed that Section 6, Foreign Assisted Projects, Procurement Manual for Local Government Units, Volume I states that:

"Sec. 4 of R.A. 9184 provides that "any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed". As such, when an executive agreement- whether a loan or a grant is entered into by the LGU, the procurement guidelines specified in said agreement shall govern the conduct of the project procurement.

Despite the legal mandate, the Government of the Philippines (GOP) and the three of the most active International Financing


ASIS

Institutions (IFIs) in the country, namely, Asian Development Bank (ADB), Japan Bank for International Cooperation (JBIC), and World Bank (WB), continue to harmonize their procurement guidelines. Thus, when a loan or a grant agreement is signed between the GOP and ADB, JBIC or WB, and such loan or grant is considered or entered into pursuant to an executive agreement, then:

- 1. For national or local competitive bidding, R.A. 9184 shall be applied except for procurement rules specified in the annex of the loan or grant agreement. The PBDs issued by the GPPB shall then be used.*
- 2. For international competitive bidding, the procurement guidelines specified in the loan or grant agreement shall be applied. The SBDs of the relevant IFI shall be used."*

With our high personal regards.

Very truly yours,


AMORÁN M. BANOCAG, CPA
State Auditor IV - ATL *5/5*