

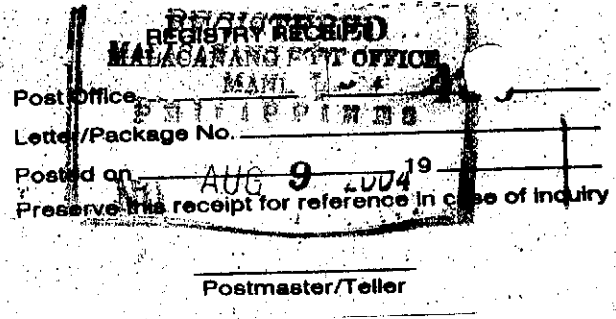
REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**

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

**NPM No. 110-2004**

August 6, 2004

**MR. ROMULO C. RABANOZ**  
Municipal Budget Officer  
Office of the Municipal Budget Officer  
Municipality of Montevista  
Province of Compostela Valley



**Re : Applicability of Republic Act 9184 and its Implementing Rules and Regulations Part A on Loan Agreements Entered Into By Local Government Units with Domestic Commercial Banks**

Dear Mr. Rabanoz:

This refers to your letter dated June 18, 2004, requesting clarification on the applicability of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") to the procurement of heavy equipment under a loan agreement between the Municipality of Montevista and the Philippine National Bank ("PNB").

Pursuant to the authority granted by the Sangguniang Bayan through Resolution No. 219, Series of 2003, the Municipal Mayor of Montevista entered into a loan agreement with the PNB in the amount of Twelve Million Pesos for the purchase of a payloader and crawler backhoe. Although you have raised several questions pertaining to the loan agreement, it would be more prudent and practical for these issues to be referred to your legal office. We deem it best to address only the procurement-related issues, to wit:

1. Whether or not the proceeds of the loan agreement executed by the PNB and the Municipality of Montevista are considered public funds;
2. Whether or not the provisions of R.A. 9184 and its IRR-A on competitive bidding are applicable in the procurement of the equipments; and
3. Whether or not the absence of a certification that funds have been appropriated and available to cover the payment of the amortization of the loan nullifies the loan agreement.

## **Nature of Loan Proceeds and Applicability of R.A. 9184 and its IRR-A**

Section 297 of Republic Act 7160 grants Local Government Units ("LGUs") authority to contract loans, credits, and other forms of indebtedness with any government or domestic private bank and other lending institutions; and provides further that the proceeds from such transaction shall accrue directly to the LGU concerned. As such, the loan proceeds from the loan agreement executed by the Municipality of Montevista and the PNB will be considered part of the public funds once it has been released to the former.

Considering that the loan proceeds are now part of the public funds, the procurement of equipments using the said loan proceeds should conform with the existing procurement rules and regulations provided by law, specifically R.A. 9184 and its IRR-A. Section 4 of R.A. 9184 provides as follows:

**This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, regardless of source of funds, whether local or foreign,** by all branches and instrumentalities of government, its department, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. 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. (Emphasis supplied)

Hence, in the absence of any circumstance warranting resort to alternative methods of procurement allowed under Rule XVI of R.A. 9184 and its IRR-A, all the stages of the competitive bidding process should be complied with; namely, advertisement, pre-bid conference, eligibility screening of prospective bidder, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.

Based on the foregoing, it is mandatory upon the Bids and Awards Committee ("BAC") of the Municipality of Montevista to conduct an eligibility screening of the prospective bidders, among others, in the procurement of the equipments mentioned in the loan agreement; otherwise, the Commission on Audit ("COA") may disallow the procurement.

## **Certificate of Availability of Funds to Pay for the Amortization Not Necessary**

Upon verification with the Local Government Sector of COA, Sections 85 and 86 of Presidential Decree 1445 do not contemplate that a certification that funds have been appropriated and available to cover the payment of the amortization of the loan is a mandatory requirement before an LGU may enter in a contract of loan. A certificate of availability of funds is only required before payment for the amortization of the loan is made. Accordingly, the absence of such certification does not affect the validity or legality of the loan agreement between the Municipality of Montevista and the PNB

Should you prefer a more in depth discussion on this matter, or further clarification is necessary, we suggest that your office contact the Local Government Sector of COA at telephone number (02) 931-7550.

## Reference to Brand Names Prohibited

Lastly, we wish to invite your attention to the legal implications of specifying in the loan agreement the brands of equipments to be procured using the loan proceeds. Emphasis should be made that under Section 18 of R.A. 9184 and its IRR-A reference to brand names is prohibited. These facts considered in correlation with Article 1183 of the Civil Code of the Philippines, if the grant of loan by PNB to the Municipality of Montevista is dependent on the condition that only the specific brands of equipments mentioned in the loan agreement may be procured, serious question on the validity of said loan agreement will arise. Article 1183 of the Civil Code of the Philippines provides, to wit:

Impossible conditions, those contrary to good customs or public policy and **those prohibited by law shall annul the obligation which depends upon them**. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

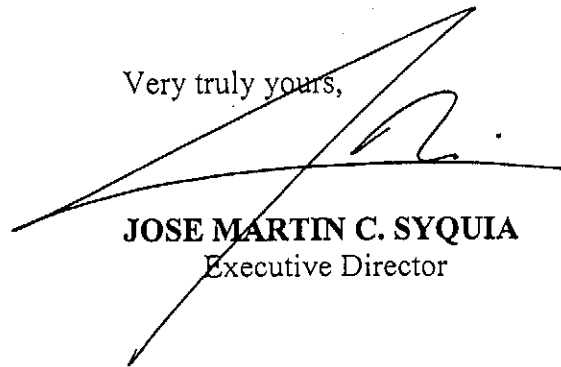
The condition not to do an impossible thing shall be considered as not having been agreed upon. (Emphasis supplied)

Accordingly, we suggest that the legality of the loan agreement, along with its implications, be consulted with your legal office before its implementation.

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.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director

Call

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**  
*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
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July 7, 2004

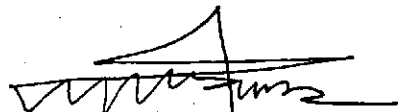
**MR. ROMULO C. RABANOZ**  
Municipal Budget Officer  
Office of the Municipal Budget Officer  
Municipality of Montevista  
Province of Compostela Valley

Dear Mr. Rabanoz:

This refers to your letter dated June 18, 2004, which we received on June 28, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on the applicability of Republic Act 9184 and its Implementing Rules and Regulations Part A to the procurement of heavy equipment under a loan agreement between the Municipality of Montevista and the Philippine National Bank.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,

  
**ATTY. REYNALDO H. BICOL JR.**  
Procurement Management Officer V

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