

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. 120-2004

August 27, 2004

HON. ENGR. DIEGO T. LIM
Municipal Mayor
Office of the Municipal Mayor
Municipality of Taft
Province of Eastern Samar

Re : Validity of Procurement Using Loan Proceeds

Dear Mayor Lim:

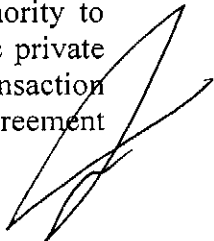
This refers to your letter dated August 20, 2004, which we received on August 24, 2004, requesting clarification on the validity of the loan agreement entered into by the Municipality of Taft with the Philippine National Bank (PNB) for the procurement of a backhoe loader, a fire truck, and a dump truck.

While you raise several concerns involving the subject loan agreement, specifically the failure to incorporate the procurement in the Local Development investment Plan of the municipality and the lack of proper authorization of the local chief executive to enter into contracts per *Sangguniang Bayan* resolution, we can only advise you on the validity of the procurement of a backhoe loader, a fire truck, and a dump truck in relation to the said loan agreement.

We are of the view that the questions involving the validity of the loan agreement entered into by the Municipality of Taft and PNB may be best left to the appropriate agency with knowledge and expertise on this matter. Accordingly, you may wish to refer your concerns pertaining to the loan agreement to the Bureau of Local Government Finance.

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 Taft and the PNB will be considered part of the public funds once it has been released to the former.

Considering that the loan proceeds have become 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, particularly Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). This finds ground on Section 4 of R.A. 9184 which 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)

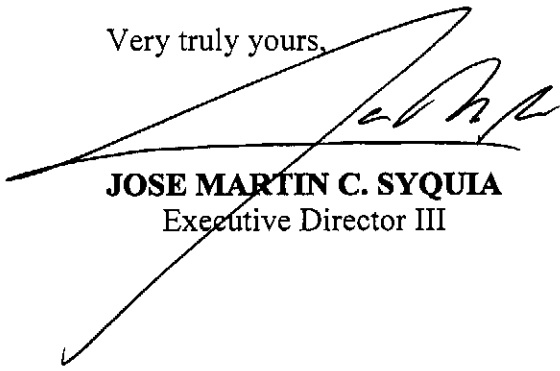
Hence, the validity of the procurement of equipments using the loan agreement is hinged on the municipality's conformance with the provisions of R.A. 9184 and its IRR-A, where it mandates that in the absence of any circumstance warranting resort to alternative methods of procurement allowed under Rule XVI of R.A. 9184 and its IRR-A, all 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 Municipality of Taft, through its Bids and Awards Committee, to conduct public bidding for the procurement of the equipments mentioned in the loan agreement; otherwise, the Commission on Audit (COA) may disallow the procurement.

This opinion is 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 III

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August 24, 2004

HON. ENGR. DIEGO T. LIM

Municipal Mayor
Office of the Mayor
Municipality of Taft
Province of Eastern Samar

Dear Mayor Lim:

This refers to your letter dated August 20, 2004, which we received on August 24, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on the validity of the loan agreement entered into by the Municipality of Taft with the Philippine National Bank with respect to Republic Act 9184 and its Implementing Rules and Regulations Part A.

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. SALVADOR C. MALANA III
Procurement Management Officer V