

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 125-2004-A

October 29, 2004

HON. ROBERT R. CASTANARES
Assistant Secretary
Department of Transportation and Communications
The Columbia Tower, Brgy. Wack-Wack,
Ortigas Avenue, Mandaluyong City

Re : Application of Section 4 of Executive order 109-A, Series of 2003 on Procurement of Consulting Services for the Laguindingan Airport Development Project

Dear Assistant Secretary Castañares:

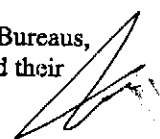
This has reference to our letter-reply¹, dated 27 September 2004, anent your request for opinion concerning the application of Executive Order 109-A, Series of 2003 (E.O. 109-A) on the procurement of consulting services for the Laguindingan Airport Development Project. Therein, we underscored the inapplicability of E.O. 109-A to said project.

However, upon post-review, and after having considered other relevant laws and policies – including the spirit behind the issuance of E.O. 109-A, this opinion is being rendered to supply a circumspect appreciation of the matters involved in the case, including the laws and policies applicable.

E.O. 109-A is couched on general terms and does not make any distinction between domestically-funded and foreign-funded procurement activities. It is well to remember that E.O. 109-A was issued to amend its precursor E.O. 109,² with end in view of harmonizing it with the provisions of Republic Act No. 9184. However, nothing in the old and the amendatory issuances may be taken to exclude foreign-funded procurement activities from the application of its provisions.

¹ Non-Policy Matter No. 125-2004 (NPM No. 125-2004)

² Streamlining the Rules and Procedures on the Review and Approval of All Contracts of Departments, Bureaus, Offices and Agencies of the Government, Including Government-Owned or Controlled Corporations and their Subsidiaries; dated May 27, 2002



E.O 109-A makes particular reference to the review and approval of government contracts and provides for the rules and procedures in the conduct thereof. On the other hand, R.A. 9184 deals with the modernization, standardization and regulation of the procurement activities of the government; and applies to procurement of infrastructure projects, goods and consulting services, regardless of source of funds, whether local or foreign.³ True, in the absence of implementing rules and regulations governing foreign-funded procurement activities, the guidelines of the foreign financing institution as contained in the loan agreement, if any, shall govern; and if the loan agreement is silent as to rules of procurement procedure, R.A 9184 and its IRR-A shall be applied.

Prescinding from the foregoing, the rules may not be construed to mean the exclusion of foreign-funded procurement activities from the ambit of E.O 109-A. The reason for the issuance of E.O. 109 and E.O. 109-A remains to be a legitimate concern even in case of foreign-funded procurement, notwithstanding the fact that an entirely different procurement procedure may be in place. The need for expeditious implementation of development projects and the speedy delivery of basic services while promoting transparency, impartiality, and accountability in government transactions remains to be sub-served in the application of E.O 109-A.⁴

In fine, public procurement contracts, whether the source of fund is domestic or foreign, shall be subject to the provisions of E.O. 109-A, for purposes of review and approval.

We trust that this clarifies matters

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

/s/m/dotc

³ See Section 4, Article I of Republic Act No. 9184.

⁴ See 1st WHEREAS Clause of Executive Order 109.