

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

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City  
Telefax Nos. (02) 900-6741 to 44*

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**NPM No. 130-2004**

October 12, 2004

**HON. FLORANTE M. SORIQUEZ**  
Acting Secretary  
Department of Public Works and Highways  
Bonifacio Drive, Port Area, Manila

**Re : Procurement for the BIIPs-CO2c, Supply/Installation/Service of Automatic Traffic Classifiers under the First National Roads Improvement and Management Project**

Dear Acting Secretary Soriquez:

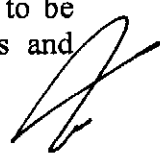
This refers to the Honorable Acting Secretary's request for comment or opinion from the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB) regarding the award of the contract for the Supply/Installation/Service of Automatic Traffic Classifiers (hereinafter the "Project") and the position of the World Bank on the matter, the sole substantive issue of which is as follows:

Whether or not the Department of Public Works and Highways (DPWH) may pursue with the implementation of the contract for the winning bidder for the Project despite the findings of the DPWH-Legal Service of several irregularities in the bid of the latter.

This concern is being raised in connection with the request of DPWH to the World Bank, the lending institution concerned, for the rescission of the award of contract for the Project to TYCO Integrated System (TIS) due to the findings of the DPWH-Legal Service of several irregularities attending the bid of TIS and to grant clearance to DPWH to re-bid the said contract. The World Bank, through a letter dated September 8, 2004, denied the requests on the ground that it found no substantive ground for rescinding the award and thus do not agree to a re-bidding of the contract.

**Source of Funds for the Procurement Project**

Section 4 of Republic Act 9184 (R.A. 9184) requires all government procurements to be conducted in accordance with the provisions of R.A. 9184 and its Implementing Rules and Regulations (IRR), to wit:



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-owned and/or controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international agreement or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

Based on the afore-quoted provision, even procurements funded out of loan agreements with International Funding Institutions (IFIs) should follow the provisions of R.A. 9184 and its IRR-A. However, until the availability of the IRR Part B of R.A. 9184, which will govern foreign-funded procurement activities,<sup>1</sup> projects financed by IFIs will be procured using the guidelines specified in the loan agreement. Accordingly, the determination of and the resolution on the validity or propriety of proceedings, issues, and other matters relative to the implementation of the guidelines for the foreign-funded procurement activity rests upon the IFI concerned.

In this regard, even if the procuring entity and the IFI arrive at conflicting findings, the findings of the latter will be given more weight than that of the procuring entity; and unless the IFI recognizes and adopts the observations or findings of the procuring entity, the latter is constrained to acknowledge the decision of the IFI. Otherwise, the IFI may resolve to cancel the loan proceeds and refuse to fund the project.

In view of the foregoing, since the World Bank upheld the legitimacy of the procurement activity in finding no substantive ground to rescind the award of the contract for the Project to TIS, we are of the opinion that the DPWH may validly pursue the implementation of the said contract despite the findings of the DPWH-Legal Service.

Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily 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

Copy furnished:

**HON. EMILIA T. BONCODIN**  
Secretary  
Department of Budget and Management  
Chairperson  
Government Procurement Policy Board

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<sup>1</sup> Section 1, IRR Part A, R.A. 9184.

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September 28, 2004

**HON. FLORANTE M. SORIQUEZ**  
Secretary  
Department of Public Works and Highways  
Bonifacio Drive, Port Area, Manila

Dear Secretary Soriquez:

We are writing to acknowledge receipt on September 22, 2004 of your personal note to the Honorable Secretary Emilia T. Boncodin, Chairperson of the Government Procurement Policy Board (GPPB), dated September 13, 2004, attached to which is the letter from The World Bank Group, dated September 8, 2004, regarding the Bidding for the First National Roads Improvement and Management Project. Your office requests for an opinion or comment on your agency's concerns and the World Bank decision on the afore-mentioned procurement project.

We wish to inform your office that we shall respond to the concerns raised by your office at the earliest possible opportunity. At this point, we are in consultation with Director Antonio V. Molano, Jr of the Bureau of Research Standards of your Department to gather additional information prior to the issuance of an opinion.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III