

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

NPM No. 131-2004

October 12, 2004

MR. BIENVENIDO Y. MALAYANG VII
Bids and Awards Committee-Technical Working Group
Mactan Cebu International Airport Authority
Lapu-Lapu City

Re : Request for clarification as to the definition of "procurement of goods" and "procurement of infrastructure projects"

Dear Mr. Malayang:

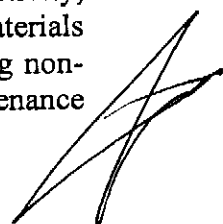
This has reference to your letter dated 27 September 2004, addressed to the Hon. Secretary Emilia T. Boncodin of the Department of Budget and Management in her capacity as Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on the definitions of "procurement of goods" and "procurement of infrastructure projects." The same was earlier acknowledged thru GPPB-TSO letter dated 29 September 2004 where this office has intimated its commitment to respond to the queries embodied therein at the earliest possible opportunity.

Section 5, Rule I of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 addresses the subject matter of the queries adverted to. The said rules define "goods," "infrastructure" and "procurement" in the following manner, and to wit:

Section 5. Definition of Terms

xxx

- (k) **Goods.** Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance



of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.

xxx

- (n) **Infrastructure Projects.** Include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works components of information technology projects, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings, and other related construction projects of the government. For purposes of, and throughout this IRR-A, the term "infrastructure projects" shall have the same meaning as and shall be used interchangeably with "civil works."

xxx

- (o) **Procurement.** Refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, i.e., goods, infrastructure projects, or consulting services, shall be determined based on the primary purpose of the contract. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of R.A. 8974 and other applicable laws, rules and regulations.

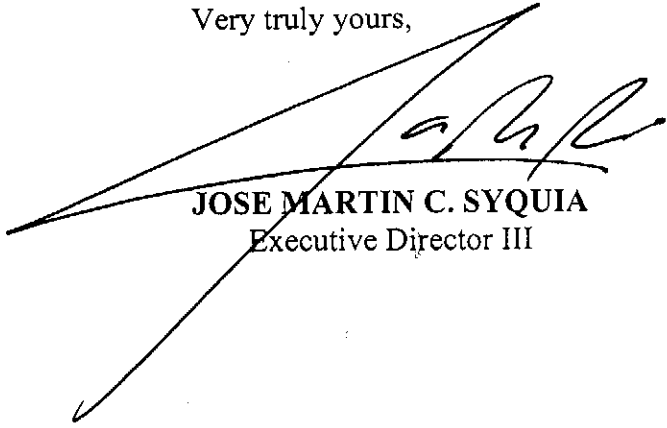
Accordingly, it is unnecessary to belabor the meaning of the foregoing terms as cursory reading of the same readily bears the import of their definitions, which for our purposes may just be emphasized, at most. The contemplation of "procurement of goods" and of "procurement of infrastructure projects" is well embraced in the foregoing definitions and no longer necessitates further discussion.

Paragraph (o), Section 5 of the IRR-A offers an answer to questions of classification in cases involving mixed procurements. It provides that the nature of the procurement is to be determined based on the primary purpose of the contract. Perforce, nomenclature assigned to the procurement or the relative amount of the goods or the infrastructure is not determinative of its nature. Hence, under the law, there is no basis to hold that "if 70% (or more) of the whole cost is that of goods it is considered as procurement of goods;" neither is there foothold to say that "if the nomenclature of the procurement is 'supply and installation of xxx', it is infrastructure."

Whether an intended procurement is of goods or of infrastructure, the issue necessarily involves the determination of the primary intention for which the contract is sought to be undertaken. While the procurement may have been conceived for a number of purposes or uses, for the benefit of applying the provisions of R.A. 9184, that which is primary or foremost shall dictate in identifying its true nature.

We trust that this clarifies matters.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Jose Martin C. Syquia', is written over the typed name and title.

JOSE MARTIN C. SYQUIA
Executive Director III