

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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Telefax Nos. (02) 900-6741 to 44

NPM No. 135-2004

October 14, 2004

MR. LORENZO S. MARCELO
Vice-President, SPUG
National Power Corporation
Quezon Ave. cor Agham Road
Quezon City

**Re : Applicability of Republic Act No. 9184 to lease or sale of NPC-
SPUG's existing assets**

Dear Mr. Marcelo:

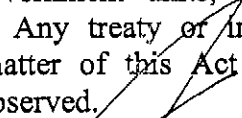
This has reference to your letter-inquiry dated 24 September 2004, anent the possibility of negotiating with a new power provider (NPP) regarding the lease or sale of NPC-SPUG's existing assets without infringing on the provisions of Republic Act No. 9184 (RA 9184).

Understandably, this issue springs from the exigency perceived by the government to accelerate the Department of Energy (DOE) and National Power Corporation's (NPC) program to reduce missionary subsidies in the SPUG areas by expediting and facilitating the entry of the private sector. DOE, hence, issued Circular 2004-01-001 featuring the entry of the private sector and the eventual phasing out of NPC-SPUG's power generation services.

R.A. 9184 does not contemplate sale or lease of government assets

R.A. 9184 is clear-cut in its scope and application. Section 4 of the law provides, to wit:

Sec. 4. Scope and Application. – 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.



Pointedly, RA 9184 specifically governs procurement activities of the government, excluding from its reach and coverage other government activities not contemplated within the definition of procurement. Section 5 of the law and its IRR-A, define procurement, as follows:

(n) *Procurement* – refers to the acquisition of Goods, consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. 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 Republic Act No. 8974, entitled “An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes,” and other applicable laws, rules and regulations.

Perceivable from the aforementioned provision is the intent to limit the application of the law, generally, to acquisition activities of the government, with the single exception in case of lease of goods and real estate. Acquisition contemplates expenditure of public funds the regulation of which is the primary consideration for the creation of the law.

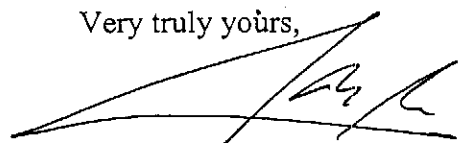
In the case of NPC-SPUG selling or leasing its existing assets, the activity does not involve expenditure of government funds, inasmuch as the same is not in the nature of procurement. Sale and lease of assets, where the government is the vendor or the lessor, are income-generating activities and is well beyond the contemplation of R.A. 9184. Needlessly, the provisions of the law prescribing for the bidding procedures and the requisites for its exercise concern only procurement matters and policies.

In view of the foregoing, the activity contemplated by the NPC-SPUG, subject to other applicable laws, may be undertaken without violation of R.A. 9184.

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

cc: **Undersecretary Cyril del Callar**
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