

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. 146-2004

November 25, 2004

ATTY. AGNES VST DEVANADERA
Government Corporate Counsel
Office of the Government Corporate Counsel
3/F MWSS Administration Building

Re : Applicable rules in foreign-funded government procurement contracts

Dear Atty. Devanadera:

This has reference to your letter, dated 13 October 2004, raising concerns on what seems to be a gap in the rules and regulations governing procurement. Apparently, clarification is sought in light of numerous requests for review of various foreign-funded procurement contracts brought by clients before your office. Hence, the lone question before us is as follows:

What rules shall govern foreign-funded procurement projects?

Guidelines of foreign loan agreement or grants, of primary application

The enactment of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) paved the way for the institutionalization of procurement reforms in the country, particularly through the issuance of a streamlined and standardized set of rules and regulations governing procurement of goods, civil works and consulting services. However, as aptly observed, notwithstanding the concept of a uniform set of procedures applicable to various procurement activities of the government, the IRR-A limits its application to fully domestically-funded projects.

Accordingly, foreign-funded procurement activities are to be governed primarily by the procurement guidelines, rules and regulations of foreign financial institutions or grantors. This is because of the absence¹ of implementing rules and regulations for foreign-funded procurement.

¹ IRR-B of R.A. 9184 has yet to be formulated and promulgated by the GPPB.

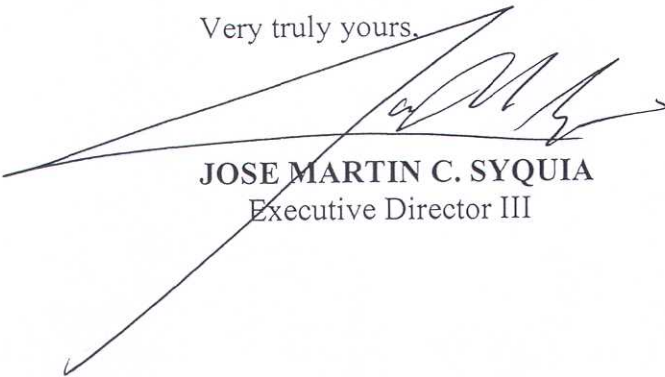


However, in the event that the loan agreement or grant does not provide for the guidelines or rules to govern the procurement activity, the provisions of IRR-A shall apply in a suppletory character.

As regards your request for copies for any circular or directive or instruction regarding the matter of foreign-funded government procurement contracts, attached herewith is a copy of DBM Circular Letter No. 2004-12.² In as much as EO 109-A³ is relevant to R.A. 9184, a copy is also attached.

We hope that with the foregoing discourse we have shed light on what may appear to be an ambiguity in the application of R.A. 9184.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

² Guidelines to Implement Section 33 of FY 2033 GAA on Muti-Year Projects.

³ Prescribing the rules and procedures on the review and approval of all government contracts to conform with Republic Act No. 9184.

RESPONSE SHEET FOR PHONE OPINIONS

PhO No. 079

Date Received: (Letter query) 10/22/04 Date Called: 11/04/04

Requesting Entity: Office of the Gov't. Corporate Counsel

Contact Person / Number: Asst. Gov't. Corp. Counsel Eren Gonzalez

Issue(s) / Request(s):

What rules shall applied in cases of foreign funded procurement projects?

Response: * Primary - The guidelines as provided under the foreign loan agreement or grant.

Secondary - in the absence of any such guidelines as mentioned above, the provisions of F.A. 9184 and its IRR-A shall ^{have} suppletory application.

(NPM 146-2004)

Remarks: OK. No written opinion/comment necessary.

All that was needed was a confirmation

Assigned to: ANy. Badong

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

October 28, 2004

ATTY. AGNES VST DEVANADERA

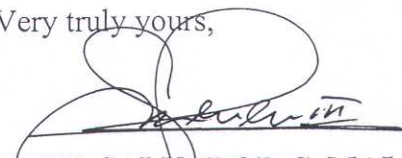
Government Corporate Counsel
Office of the Government Corporate Counsel
3/F MWSS Administration Building,
Katipunan Road, Balara, Quezon City

Dear Atty. Devanadera:

This refers to your letter dated October 22, 2004, which we received on October 27, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically on the applicable rules and regulations for foreign-funded projects.

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
Head, Legal and Policy Group