

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. 153-2004

December 9, 2004

ATTY. FRANK MARTIN S. ABALOS
City Administrator
Chairman, Bids and Awards Committee
City of Malabon

**Re : Proper Implementation of Republic Act 9184 and Its
Implementing Rules and Regulations Part A**

Dear Atty. Abalos:

This refers to your letter dated November 23, 2004, which we received through facsimile on even date, seeking clarification on the propriety of the use of Negotiated Procurement in your contemplated acquisition of software and equipment. Apparently, this request is brought in light of the City Government's plan to computerize its operational system. Hence, the principal issue for resolution is as follows:

Whether or not Negotiated Procurement may be resorted to by the City Government of Malabon in the acquisition of software and equipment.

However, in the resolution of the foregoing issue, the following sub-issue proves relevant, to wit:

Whether Development Data Center Incorporated (DDCI), which is 100% subsidiary of Development Bank of the Philippines (DBP) may be considered as an agency of the government for purposes of compliance with R.A. 9184

Development Data Center Incorporated is an Agency of the Government

We quote the definition of *Agency of the Government* under paragraph 4, Section 2, Introductory Provisions of Executive Order No. 292,¹ to wit:

¹ Otherwise known as the "The Administrative Code of 1987."

Agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein. (Emphasis supplied)

Whether DDCI is among those contemplated by the foregoing definition of an agency of the Government, we examine briefly the circumstances surrounding its existence and operation. Thus, our research yields the following information relevant to our endeavor:

1. Development Data Center, Inc., (DDCI) is formerly known as Development Bank Data Center., Inc.
2. It is a wholly owned subsidiary of the Development Bank of the Philippines.
3. It was created under Development Bank of the Philippines (DBP) Board resolution No. 3172 dated October 6, 1982 for the of implementing the computerization program of DBP.
4. Finally, being equipped with the experience in banking systems and facilities management, DDCI now ventured towards the development and implementation of non-banking systems for private and government entities as well.

DBP is a government-owned financial institution established and is operating pursuant to Executive Order No. 81, as amended². In accordance with the powers vested by law upon it, Resolution No. 3172 was passed with the purpose of implementing DBP's computerization program. Considering that Development Data Center Inc. has no existing charter of its own, its existence is necessarily anchored on the charter and person of the corporation creating it.

Thus, Development Data Center Incorporation (DDCI), being a wholly owned subsidiary of Development Bank of the Philippines (DBP) and the latter being an agency of the government, is deemed under the law as an agency of the government. For purposes of compliance with R.A. 9184 and for other legal purposes, the former is merely an extension of the personality of DBP and necessarily the character of the latter as an agency of the government.

Purchase of Goods from another agency of the Government through Negotiated Procurement

R.A. 9184 and its IRR-A allow the use of alternative methods of procurement in highly exceptional cases as provided therein. Among the alternative methods relevant to the issue on hand is Negotiated Procurement under Section 53 of R.A. 9184 and its IRR-A. The provision states:

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

xxx

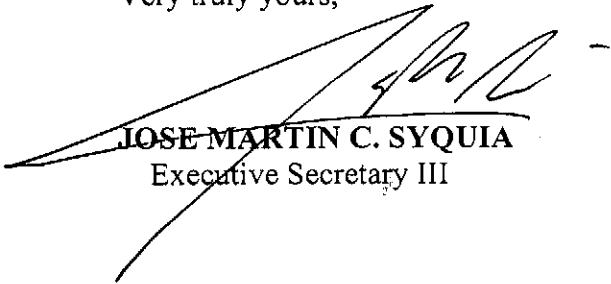
- e) Purchases of goods from another agency of the Government, such as the PS-DBM, which is tasked with a centralized procurement of commonly, used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. xxx

² Otherwise known as the "1986 Revised Charter of the Development Bank of the Philippines"

Prescinding from the above discussion, this office opines that the City of Malabon may procure software and equipment by way of the alternative method of Negotiated Procurement on the basis that DDCI is an agency of the government. However, it shall ensure that the most advantageous price for the Government is obtained.³

With the foregoing elucidations, we trust that the issues raised are clarified. 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.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Secretary III

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REGISTRY RECEIPT

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November 24, 2004

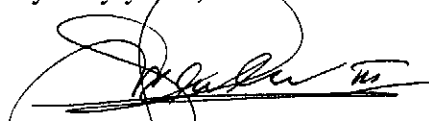
ATTY. FRANK MARTIN S. ABALOS
City Administrator
Chairman, Bids and Awards Committee
City of Malabon

Dear Atty. Abalos:

This refers to your letter dated November 23, 2004, which we received through facsimile on even date, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB), through Executive Director Jose Martin C. Syquia, seeking advice on the proper implementation of Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically with respect to the plan of the City of Malabon to procure a computerized operational system.

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 GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group