

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 016-2004

February 19, 2004

HON. LEANDRO R. MENDOZA
Secretary
Department of Transportation and Communication
17/F The Columbia Tower, Brgy. Wack-wack
Ortigas Ave., Mandaluyong City

Re: Applicability of R.A. 9184 to Foreign Funded Projects

Dear Sec. Mendoza:


This refers to your letter to Hon. Secretary Emilia T. Boncodin dated January 21, 2004, which was forwarded to this Office for appropriate action. A careful reading of your letter reveals a single issue that has to be resolved, to wit:

Whether or not the Department of Transportation and Communication ("DOTC") complied with the procurement guidelines of the Japan Bank for International Cooperation ("JBIC") regarding the bidding of the New Iloilo Airport Development Project .

Scope of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184")

The enactment of Republic Act No. 9184 ("R.A. 9184"), otherwise known as the Government Procurement Reform Act ("GPRA"), 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, notwithstanding the concept of a uniform set of procedures applicable to various procurement activities of the government, it must be noted that the IRR-A limits its application to fully domestically-funded projects. Witness Section 1 of the IRR-A, to wit:

This Implementing Rules and Regulations (IRR) Part A, hereinafter called "IRR-A", is promulgated pursuant to Section 75 of Republic Act No. 9184 (R.A. 9184), otherwise known as the "Government Procurement Reform Act" (GPRA), for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement



activities of the government. **This IRR-A shall cover all fully domestically-funded procurement activities from procurement planning up to contract implementation and termination x x x** (Emphasis supplied.)

Based on the above-cited provision, it can be clearly and logically inferred that the IRR-A of R.A. 9184 does not apply to projects funded by International Financing Institutions ("IFI"). This being the case, the procurement activity for the New Iloilo Airport Development Project ("NIADP"), funded through Loan Agreement No. PH-P214 between the Republic of the Philippines and the Japan Bank for International Cooperation ("JBIC"), is governed by the procurement guidelines, rules and regulations of JBIC.

Due to the foregoing elucidations, and by virtue of the mandate of the GPPB under R.A. 9184 and its IRR-A, it is respectfully conveyed that the GPPB is not in a legal position to determine whether a particular government agency has complied with or violated the procurement rules and regulations of the IFI funding a specific project. Additionally, assuming the GPPB confirms compliance or non-compliance by the procuring entity, at the end of the day the IFI still has the final authority to determine whether its procurement guidelines have been complied with or not.

Compliance with JBIC Procurement Guidelines

Notwithstanding the foregoing, it is worthwhile to point out that the chronology of events as presented in your letter reveals that the DOTC has manifestly complied with JBIC guidelines, considering that every stage of the procurement of civil works for the NIADP was conducted with the concurrence and consent of JBIC, to wit:

1. DOTC has agreed to re-bid NIADP after JBIC stated in its letter dated July 9, 2003 its non-concurrence with the technical evaluation result of Group 1 Documents, disqualifying Taisei Corporation due to the withdrawal of Kajima Corporation from membership in the Taisei Corporation-Shimizu Corporation-Kajima Corporation Joint Venture ("TSK JV");
2. DOTC through its Pre-Qualification Bids and Awards Committee ("PBAC") issued Resolution No. 03-07 dated July 31, 2003, approving the re-submission of technical and financial documents of the three (3) pre-qualified bidders;
3. JBIC in its letter dated August 7, 2003, expressed no objection on the recommendation made by DOTC's Pre-Qualification Bids and Awards Committee ("PBAC") that TS JV, the bidder which was initially disqualified has already satisfied the Pre-qualification Evaluation Criteria during the re-submission of the bids; and,
4. On September 19, 2003, JBIC again concurred with the Evaluation Report of Group 1 Documents, which was submitted to it on September 5, 2003 by the PBAC of DOTC.

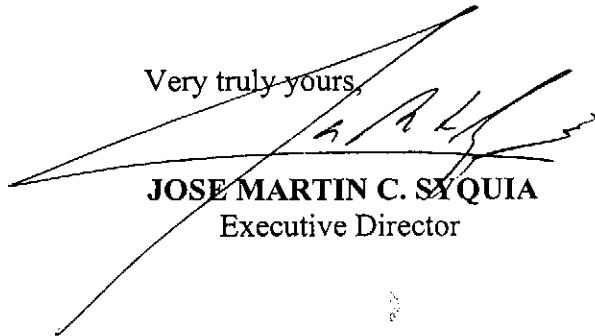
Pointedly, as far as the present state of the procurement of civil works for the NIADP is concerned, it can be safely and reasonably concluded that DOTC has complied with the procurement guidelines, rules and regulations of JBIC. However, as this observation is not

binding to JBIC, it is respectfully submitted that the matter be addressed directly to JBIC for appropriate action and evaluation.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts and circumstances.

We trust that this clarifies matters.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. M. Syquia', is written over a horizontal line. The signature is slanted and extends above and below the line.

JOSE MARTIN C. SYQUIA
Executive Director

Copy furnished:

Honorable EMILIA T. BONCODIN
Secretary
Department of Budget and Management

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