

NPM No. 25-2008

16 September 2008

MADLINE R. VALERA, MD, MScIH

Senior Vice President

Health Finance Policy Sector

PHILIPPINE HEALTH INSURANCE CORPORATION

City State Center Building

709 Shaw Boulevard, Pasig City

**Re : Clarification on the Provisions of Republic Act No. 9184
and its Implementing Rules and Regulations**

Dear Dr. Valera:

This pertains to the above-captioned matter referred to the Technical Support Office of the Government Procurement Policy Board (GPPB-TSO) in a letter dated 9 April 2008.

From your letter, it was determined that the Philippine Health Insurance Corporation (PhilHealth) intends to sell its rights over its works, i.e. the PhilHealth Benchbook, Relative Value Scale, ICD-10 Philippine Edition, and such other composition, as author to a particular publisher. The foregoing is proposed to be undertaken through a Memorandum of Agreement (MoA) wherein the following arrangements are to be included:

- *PhilHealth will serve as author of its original works;*
- *A book distributor will serve as the publisher;*
- *PhilHealth will grant to the publisher the sole, exclusive, and worldwide right and license to produce and publish the works;*
- *The production and publishing of the works will be at the publisher's own risk and expense. This means zero expense for PhilHealth;*
- *PhilHealth will receive commission/earnings for copies sold by the publisher;*
- *The publisher will give free presentation/complimentary copies of the first edition to PhilHealth;*
- *The publisher will give PhilHealth free copies of any subsequent revised edition;*
- *At the event it will need more copies, PhilHealth can purchase from the publisher at a discount;*
- *PhilHealth can re-sell purchased copies at agreed suggested retail price.*

A perusal of the features of the purported MoA, in particular, items 1 to 7 and 9 thereof, reveal that there is no public money spent in acquiring the services of the publisher which shall print, reproduce and distribute the aforesaid literature. Notably, the printing, reproduction, and distribution will be for the publisher's own account.

You also claim that subjecting the acquisition of the services of a publisher to public bidding would be difficult, considering that the bid evaluation procedure for goods or consultancy procurement may not prove appropriate if the selection criterion will greatly depend on the highest commission offered by the publishing firm.

Thus, we find that the sole substantive issue for the resolution of this office is whether the transaction with a publisher, as proposed above, is covered by the provisions of Republic Act No. 9184 (RA 9184) and its Implementing Rules and Regulations (IRR-A).

Direct Purchase from the Chosen Publisher/Procurement of Services

While it may be true that initially, no public funds shall be released by your agency in the selection of the publisher and that publication shall be assumed by the latter, it cannot be denied that the same still involves acquisition of services for the government. Likewise, in the event that PhilHealth will need additional copies of said publication, it is clear that your office has no choice but to purchase said copies, although at a discounted price, directly from your chosen publisher. This is where the rules governing procurement significantly affects the purported transaction.

Based on your representations, your good agency will be providing a chosen publisher a business proposition where it is quite clear that its clientele will still be PhilHealth. We view this ultimately as Philhealth's acquisition of the services of a publisher, which would necessitate a transparent and competitive selection among a number of prospective publishers, following the provisions of R.A. 9184 and its IRR-A.

On the basis of the foregoing, we find the procedure in the procurement of goods the appropriate method in the acquisition of publishing services. Section 5 (k) of the IRR-A of R.A. 9184 provides:

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.

x x x

To add, the perceived features of the chosen publisher, among others, the wide network of bookstores in the Philippines and abroad, expertise in the industry, capability and resources to manage the sale, inventory, storage and delivery of publications and the willingness to publish the PhilHealth materials at its own risk, may be included in the specifications of the publisher in the bidding documents.

It would be good to emphasize at this juncture that public bidding, which is the general mode of procurement under R.A. 9184 and its IRR-A, is held for the protection of the public interest, as it ensures transparency and open competition among the participating bidders.

Thus, we are of the view that conducting a public bidding in the selection of a publisher will prove to be more advantageous for PhilHealth, considering that the same will enable your agency to acquire the publisher's services at a fair and reasonable price and will likewise ensure that overpricing, favoritism and other perceived anomalous practices would not attend said selection.

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 or circumstances.

We trust that this clarifies matters.

Very truly yours,


for **RUBY U. ALVAREZ**
Executive Director III



Republic of the Philippines
PHILIPPINE HEALTH INSURANCE CORPORATION

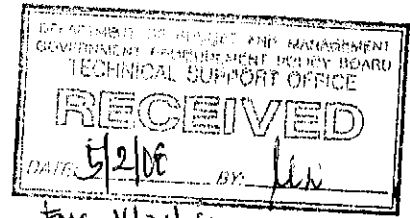
Citystate Centre, 709 Shaw Boulevard, Pasig City
Healthline 637-9999 www.philhealth.gov.ph

Atty. Chels,
As please

TH
4/15/08

April 9, 2008

ATTY. RUBY U. ALVAREZ
Executive Director
Technical Support Office
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center
Pasig City



Emmie,

Pls. handle, maybe you
can have Chels work on this
before she leaves. In this way
she'll be familiar w/PHIC's
concerns.

4/13/08

Dear Atty. Alvarez:

The Health Finance Policy Sector (HFPS) of PhilHealth would like to request for clarification regarding the coverage of *Republic Act 9184 and its Implementing Rules and Regulations-A*, as amended, specifically as to whether it would cover a proposed business transaction with a publisher and the authorship of PhilHealth on its original works i.e. the PhilHealth Benchbook, Relative Value Scale, ICD-10 Philippine Edition, and other materials.

The said business transaction, via a proposed Memorandum of Agreement between PhilHealth and a Publisher, basically has the following features:

- PhilHealth will serve as "Author" of its original works
- A book distributor will serve as "Publisher" (may include publishing imprint subsidiary to or associated with Publishers, and the Publishers' administrators and assigns or successors in business)
- PhilHealth will grant to the "Publisher" the sole and exclusive and worldwide right and license to produce and publish the works
- The production and publishing of the works will be at Publisher's own risk and expense (zero printing expense for PhilHealth)
- PhilHealth will receive commissions/earnings for copies sold by the Publisher
- The Publisher will give free presentation/complimentary copies of the 1st Edition to PhilHealth
- The Publisher will give PhilHealth free copies of any subsequent revised edition
- At the event it will need more copies, PhilHealth can purchase from the Publisher at discounts
- PhilHealth can re-sell purchased copies at agreed suggested retail price

It is our view that in the said transaction, PhilHealth is not trying to "procure" or "purchase" printing services because it would not be spending any amount and the printing of the works will be at the Publisher's risk and expense. On the contrary, PhilHealth is in effect selling the rights to its authored works for which it will receive earnings in the form of commission.

- publication
- copy

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Nevertheless, subjecting the said transaction under the terms of public bidding presents us with some difficulties, as follows:

1. The selection of the winning bidder is problematic because under the proposed transaction we will be choosing the bidder with the highest commission offer most advantageous to PhilHealth. Under the terms, we cannot apply the provisions of RA 9184 on bid evaluation using the Lowest Calculated Responsive Bid (LCRB) nor using the Highest Rated Responsive Bid (HRRB) which is applicable to consulting services.
2. We also find it problematic to follow the proforma Invitation to Apply for Eligibility and to Bid (IAEB) prescribed by the GPPB and in accordance to RA 9184 and its Implementing Rules-A. We find it quite odd to include the approved budget for the contract (ABC), which in this case amounts to zero, and to indicate the highest offer of commission as criteria for award.

PhilHealth is studying the option of engaging business with a Publisher to utilize favorable advantages such as its big market and wide network of bookstores in the Philippines and abroad, its expertise in the industry, its capability and resources to manage the sale, inventory, storage and delivery of publications, and its willingness to publish our materials at its own risk.

We hope for your guidance on how to proceed with the said business transaction.

Very truly yours,

MADELEINE R. VALERA, MD, MScIH (Heidelberg)
Senior Vice President
Health Finance Policy Sector

*substantive program?
→ printing
→ financial on long commission
→ look for
will be part of publisher
forward in the country
- reports for book prep
- publication → service*