



## TECHNICAL SUPPORT OFFICE

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Pasig City, Philippines 1605

**NPM No. 045-2005**

October 14, 2005

**DIR. SOLIMAN C. DABOCOL**  
Head, ISOS – Data Center  
Project Proponent  
Bureau of Internal Revenue

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

Dear Dir. Dabocol:

This refers to your letter, dated 12 October 2005, seeking clarification on the propriety of the use of Negotiated Procurement in your contemplated enhancement and maintenance of your agency's existing Electronic Filing and Payment System (eFPS) to immediately facilitate the needed system changes brought about by the revised Value Added Tax (r-VAT) law. Hence, the substantive issue for resolution is:

Whether Development Data Center Incorporated (DDCI), qualifies as an agency of the government for purposes of compliance with Section 53 (e) of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

### **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,<sup>1</sup> to wit:

*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)

<sup>1</sup> Otherwise known as the "The Administrative Code of 1987."

To determine 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, we quote herein 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 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 amended<sup>2</sup>. 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

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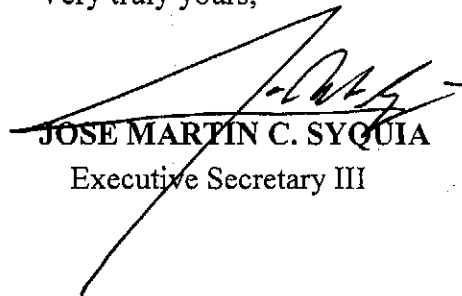
<sup>2</sup> Otherwise known as the "1986 Revised Charter of the Development Bank of the Philippines"

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

Prescinding from the above discussion, this office opines that the BIR 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.<sup>3</sup>

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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<sup>3</sup> See Section 48.1 of IRR-A.