

NPM No. 046-2005

November 14, 2005

HON. GIVEL MONTEJO MAMARIL

Municipal Mayor
Municipal Government of Malalag
Province of Davao Del Sur

Dear Hon. Mayor Mamaril:

This refers to your letter dated 01 August 2005, indorsed to our office by the Commission on Audit,¹ requesting that the "Rehabilitation of Mabini-Lapu-lapu Road and Construction of Reinforced Concrete Box Culvert in Barangays Mabini and Lapu-lapu both of Malalag, Davao Del Sur" be exempted from the application of the Guidelines for the Implementation of Projects Undertaken "By Administration" or Force Account provided for under GPPB Resolution No. 08-2004.

The project is part of the six-year development project of the Agrarian Reform Community Project (ACRP) under the Department of Agrarian Reform (DAR) which has a net length of 5.59718 kms and an estimated cost of Nine Million Five Hundred Ninety-Two Thousand Five Hundred Thirteen Pesos and Eighty-five Centavos (Php. 9,595,513.85). It is an Asian Development Bank-assisted infrastructure project and is prosecuted in support to the LAMARISAN Agrarian Reform Communities.

The Concept of Project Implementation "By Administration"

At this juncture, we inform your good office that the concept of "By Administration" is defined in and its application now governed by GPPB Resolution 013-2005, effective 26 September 2005. The said resolution overrides GPPB Resolution 08-2004. However, the repealing issuance does not veer from the concept of "by administration" as a procedure by which the implementation of an infrastructure project is carried out under the administration and supervision of the concerned agency itself.

The implementation of project "by administration" presupposes that the implementing agency has the independent capability to undertake the project through use of its own

¹ 4th Indorsement, 27 September 2005, Local Government Sector, Commission on Audit, signed by Assistant Commissioner Sofronio L. Flores, Jr.

resources, both in respect of personnel and the materials, tools or equipment. It implies that the agency implements the conduct of infrastructure works under its own direction, supervision and administration. It precludes the engagement of other agencies or governmental units and/or the involvement of private contractors in the prosecution of the said works. This rule is such that a set-up that is otherwise not satisfying of these conditions shall be deemed contrary to requirements of the guidelines and repugnant to the concept of "by administration;" and therefore not sanctioned by law.

Thus, the question of whether the foregoing Guidelines are applicable to the contemplated project which is subject of this opinion depends by great deal on the factual backdrop and circumstances of the undertaking. If the proposed Rehabilitation of Mabini-Lapu-lapu Road and Construction of Reinforced Concrete Box Culvert in Barangays Mabini and Lapu-lapu both of Malalag, Davao Del Sur is considered a project of the Municipality of Malalag and said municipality is not merely engaged by the DAR as constructor or works implementor, then in its implementation it may invoke the provisions of GPPB Resolution 013-2005 and avail of the procedures set therein.

On the other hand, if the infrastructure undertaking is DAR's exclusive project and the participation of the Municipality of Malalag is merely sought as an instrumentality for the actual prosecution of the civil works, then, the guidelines on "by administration" is inapplicable. The scheme properly falls within the contemplation of an Agency-to-Agency Agreement which may be employed by the concerned government agency and local government unit concerned, through a Memorandum of Agreement (MoA), to accomplish the project; hence, dispensing of the need to follow the procedures under RA 9184 as the same is outside the ambit of the said law's provisions.

Agency-to-Agency Agreement

Under the concept of an Agency-to-Agency Agreement, government agencies or units may, when allowed by law or mandate, undertake the implementation of infrastructure works by the expedience of entering into an agreement with another government agency or unit where the latter shall be bound to do the actual works and gets payment for this purpose. This mechanism, however, requires that the agency engaged is sanctioned by law or charter to undertake infrastructure works for other government agencies, and that it does not contract out the same works to private contractors or otherwise circumvent existing procurement rules and regulations.

Thus, the chief issue of whether the concept of implementation of infrastructure projects "by administration" is applicable under a given circumstance brings us to the necessary questions as to whose project the infrastructure works are being undertaken and as to which agency is responsible for the implementation of the same. It is emphasized that under the concept of "by administration" the infrastructure works are prosecuted by the agency on its own behalf, utilizing its resources and under its own administration and supervision and precludes the engagement of other governmental units or agencies or of private contractors.

Inasmuch as this office is not in a better position to determine whether the "Rehabilitation of Mabini-to-Lapu-lapu Road and Construction of Reinforced Concrete Box Culvert in Barangays Mabini and Lapu-lapu both of Malalag, Davao Del Sur" than the agency and the local government unit concerned, we regret to be unable to categorically state whether the circumstances surrounding the undertaking call for the application of the Guidelines under

GPPB Resolution 013-2005. The answer lies within the domain of the determination of the concerned agencies which has to be established so that the application of the guidelines may finally be known.

In fine, the collateral issue of whether exemption under this case is relevant remains to be known until the abovementioned issues are resolved. Nonetheless, let it be stated that the Government Procurement Policy Board (GPPB), being a creation of Republic Act No. 9184 (R.A 9184), can not exercise functions not granted to it by said law. Its mandate is to effectuate the purpose and intent of the Government Procurement Reform Act; thus, its operations are confined by said law and only within the scheme of the implementation of its provisions according to legislative policy.

Hence, requests for exemption are beyond its power to grant. It can not arrogate unto itself the power to grant exemptions inasmuch as it does not have the power to legislate nor determine the coverage of the law. At most, it may only render contemporaneous construction of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations pursuant to its rule-making power.

This clarification is being rendered based on the facts and particular circumstances as represented. It may necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters

Very truly yours,


ELMER H. DORADO
Officer-in-Charge

Copy furnished:

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