

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 078-2004

ATTY. CARLOS R. BAUTISTA JR.
Chief Legal Counsel
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May 26, 2004
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Re : Request for Clarification of Section 42.5 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184")

Dear Atty. Bautista:

This refers to your letter dated May 18, 2004, which we received on May 19, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board ("GPPB"), requesting for clarification of Section 42.5 of the IRR-A of R.A. 9184.

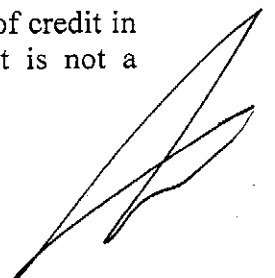
This issue is raised in connection with the on-going bidding process of PAGCOR for its procurement of casino playing cards.

Issuance of Letters of Credit

A reading of Sec. 42.5 of the IRR-A of R.A. 9184 will reveal that the prohibition on the issuance of a letter of credit applies only when it is in favor of the following: (i) a Philippine entity; or (ii) any of its foreign manufacturers or suppliers. Sec. 42.5 of the IRR-A of R.A. 9184 specifically provides as follows:

No procuring entity shall be allowed to issue a letter of credit **in favor of a Philippine entity** or to **any of the latter's foreign manufacturers or suppliers**, with respect to any procurement. (Emphasis supplied)

As can be gleaned from the above-cited provision, the issuance of a letter of credit in favor of a foreign manufacturer or supplier is not prohibited, provided that it is not a



manufacturer or supplier of a Philippine entity. This contemplates a situation where, by being the distributor or local supplier for the foreign manufacturer or supplier, the Philippine entity acts as the agent and the foreign manufacturer or supplier is the principal.

In our jurisdiction, what is being prohibited and avoided is the situation where the procuring entity pays the supplier without the goods or services having been delivered. The rationale behind the proscription in the issuance of a letter of credit is couched on the fact that the same is a form of an advance payment; an eventuality frowned upon by Section 88 of Presidential Decree 1445 which provides:

Prohibition against advance payment on government contracts. - (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

(2) Notwithstanding the foregoing paragraph, any government agency, with the approval of the proper department head, may furnish supplies and materials to any party who has a contract with that agency if the supplies and materials are needed in the performance of the services being contracted for and the value thereof does not exceed in any one month ten percent of the value of the services already rendered due and unsettled as computed by the agency concerned.

Aside from the prohibition on the use of public funds for private purpose, advance payment is never countenanced for the simple reason that the government should not fund, directly or indirectly, the business endeavor of a supplier or manufacturer. It is an accepted fact that any person contracting with the Government for the rendition of services or delivery of supplies and materials is presumed to be 'financially' and 'logistically' prepared for the purpose. The assumption is that he has his own resources to rely upon in the performance of his contractual undertaking[s].¹

While it is true that IRR-A prohibits the issuance of a letter of credit in favor of a Philippine entity and its foreign manufacturer or supplier, the same is not true when a procuring entity directly contracts with a foreign manufacturer or supplier as in the case of importation.

Being a product of international commerce, it is only imperative that the issuance of a letter of credit in favor of foreign manufacturers or suppliers be considered as an acceptable mode of payment, especially in cases of foreign procurement by the Government. A letter of credit is recognized as a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying.²

¹ Bartolome C. Fernandez, *A Treatise on Government Contracts under Philippine Law*, p. 184 (2001).

² *Bank of America, NT & SA v. Court of Appeals*, G.R. No. 105395, December 10, 1993.

As such, if PAGCOR is procuring directly from a foreign supplier or manufacturer, the said government corporation is not covered by the prohibition on the issuance of a letter of credit under Section 42.5 of the IRR-A. Hence it may utilize the said commercial instrument to facilitate its international transactions.

With the foregoing, we trust that your query has been sufficiently addressed. 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 Director



REPUBLIC OF THE PHILIPPINES

GOVERNMENT PROCUREMENT POLICY BOARD
DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
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May 20, 2004

ATTY. CARLOS R. BAUTISTA JR.
Chief Legal Counsel
Philippine Amusement and Gaming Corporation
PAGCOR House, 1330 Roxas Boulevard,
Ermita, Metro Manila

Dear Atty. Bautista:

This refers to your letter dated May 18, 2004, which we received on May 19, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A.

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. REYNALDO H. BICOL JR.
Procurement Management Officer V

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