

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 082-2004

June 11, 2004

ATTY. ELENITO M. BAGALIHOG
Chairman, Bids and Awards Committee ("BAC")
National Water Resources Board ("NWRB")
8th Floor, NIA Building, Epifanio delos Santos Ave.
Quezon City, Metro Manila

**Re : Applicability of Republic Act No. 9184 ("R.A. 9184") to Foreign
Funded Projects**

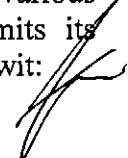
Dear Atty. Bagalihog:

This refers to your letter dated May 21, 2004, which we received on May 24, 2004, requesting for a written legal opinion on the issue raised in your first letter dated April 5, 2004, to which we have already responded through telephone on April 26, 2004. A careful reading of your letter reveals a single issue that has to be resolved, to wit:

Whether or not the NWRB complied with the procurement guidelines of the World Bank ("WB") regarding the bidding of the Fourteen (14) units of Water Quality Checker for the National Water Data Collection Network of the Water Resources Development Project ("The Project").

Scope of the Implementing Rules and Regulations Part A ("IRR-A") of 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.)

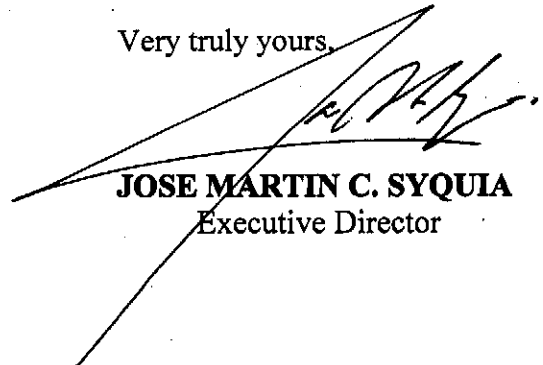
Based on the above-cited provision, it can be clearly and logically inferred that the IRR-A of R.A. 9184 does not apply to projects funded by International Financing Institutions ("IFI"). This being the case, the procurement activity for the Project, which is funded by the WB, as mentioned in your letter, is governed by the procurement guidelines, rules and regulations of such IFI.

Due to the foregoing elucidations, and by virtue of the limited powers 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 that the GPPB confirms compliance or non-compliance by the procuring entity, at the end of the day, the IFI concerned still, has the final authority to determine whether its procurement guidelines have been complied with or not.

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

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

RESPONSE SHEET FOR PHONE OPINIONS

Date Received/Date Called : April 14, 2004 / April 26, 2004
Requesting Agency : National Water Resources Board
Contact Person : Atty. Elenita Bagalinas (9202603)
Issues/Requests :

FACTS:

- procurement of fourteen (14) units of Water Quality Checker for the Water Resources Development Project funded by World Bank.
- bidder - Dalila Trading was disqualified, having failed to meet quality for one tech. spec: (seawater specific Brandy)
- After contract signing with Guill-Bern Corporation, resident auditor alleged that the award of the contract should have been made to Dalila Trading, being the lowest complying bidder.
- an on-site demonstration test b/n the two (2) bidders was made, ~~afterwards~~ Guill-Bern's equipment was recommended to be purchased by the Technical Staff.
- Would it be proper for the NWRB to award the contract to Guill-Bern, which is the lowest complying bidder considering the disqualification of Dalila Trading?

ISME

Response :

① The IRN-A of RA 9151 is applicable only to procurement of domestically-funded projects; since the subject matter of the query involves procurement of equipment which is foreign-funded, the said project is not covered by the IRN-A.

② Assuming that the IRN-A is applicable, we see no irregularity in the conduct of bidding by the NWRB BAC. The disqualification of Dalila Trading by failing to comply with the tech. spec. of the agency is in accordance with the good faith criteria under sec. 30.1 of the IRN-A;

Moreover, the agency is even lenient when it allows an on-site demonstration test b/n the 2 bidders even after the contract was awarded to Guill-Bern. Lastly, all protests must first be resolved before any award is made based on section 17 of the IRN-A, hence, it follows that no protest should have been entertained after the contract was awarded to the winning bidder.

Remarks:

no need for written opinion.

(NPM 082-2004, dated June 11, 2001)

Assigned to:

Gen