

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. 093-2004

July 2, 2004

MR. ROGELIO M. MURGA
President and CEO
National Power Corporation
Cor. Quezon Avenue & Agham Road,
Diliman, Quezon City

Re : Prohibition on the Issuance of Letters of Credit Under Section 42.5 of the Implementing Rules and Regulations Part A of Republic Act 9184

Dear Mr. Murga:

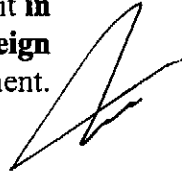
This refers to your letter dated June 23, 2004, which we received on June 28, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board ("GPPB"), requesting for clarification on the prohibition on the issuance of letters of credit provided under Section 42.5 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184").

We wish to inform you that in two earlier opinions, particularly NPM 009-2004, dated February 6, 2004, and NPM 014-2004, dated February 18, 2004, we have discussed the issue whether or not Section 42.5 of the IRR-A of R.A. 9184 prohibits the issuance of letters of credit in favor of foreign manufacturers or suppliers, hereinafter quoted, to wit:

Issuance of Letters of Credit

A reading of Sec. 42.5 of 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 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, what the provision disallows is the issuance of a letter of credit in favor of a foreign 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.

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.¹

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

¹ *Bank of America, NT & SA v. Court of Appeals*, G.R. No. 105395, December 10, 1993.

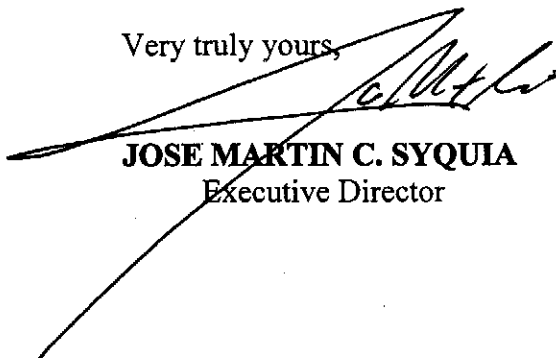
contracting with the Government for the rendition of services or delivery of supplies and materials is presumed to be 'logistically' prepared for the purpose. The assumption is that he has his own resources to rely upon in the performance of his contractual undertaking[s].²

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. Consequently, unless SBMA is procuring directly from a foreign supplier or manufacturer, the exemption being sought for under Section 42.5 of IRR-A of R.A. 9184 cannot be granted to your office.

In view of the foregoing, we reiterate our opinion that Sec. 42.5 of the IRR-A of R.A. 9184 does not prohibit the issuance of a letter of credit in favor of foreign manufacturers or suppliers but is limited only to foreign manufacturers or suppliers of a Philippine entity.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

MALACANANG POST OFFICE
RECEIPT RECEIVED
MANILA
PHILIPPINES 049
Post Office
Letter/Package No. _____
Post NO 306 7 2004 19
Preserve this receipt for reference in case of inquiry
Postmaster/Teller

/dlsn/npm/npc/07.04

² Bartolome C. Fernandez, *A Treatise on Government Contracts under Philippine Law*, p. 184 (2001).

RESPONSE SHEET FOR ONE OPINIONS

PhO No. 045-2004

Date Received: 06.23.04

Date Called: 06.30.04

Requesting Entity: NPC

Contact Person / Number: Elizabeth 922-0401

Issue(s) / Request(s): Clarification on issuance of letter of credit in favor of foreign suppliers.

Response: Issuance of LC in favor of foreign suppliers/manufacturers is not prohibited. Sec. 42.5 prohibits issuance of LC in favor of a Philippine entity or ~~a foreign supplier/manufacture~~ a Philippine entity's foreign supplier/manufacture.

Remarks: written response requested (NPM 093-2004, July 2, 2014)

Assigned to: Dennis

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June 28, 2004

MR. ROGELIO M. MURGA
President and CEO
National Power Corporation
Cor. Quezon Avenue & Agham Road,
Diliman, Quezon City

Dear Mr. Murga:

This refers to your letter dated June 23, 2004, which we received on June 28, 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, specifically on the prohibition on the issuance of a letter of credit.

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 Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. REYNALDO H. BICOL JR.
Procurement Management Officer V