

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 094-2004

July 7, 2004

BGEN. ANGEL G. ATUTUBO
Chairman, Bids and Awards Committee III
Manila International Airport Authority
MIAA Administration Building, MIA Road,
Pasay City, Metro Manila

Re : Contracts for Telecommunications Services

Dear Gen. Atutubo:

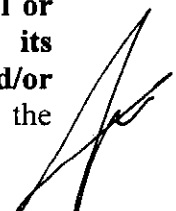
This refers to your letter dated June 16, 2004, which we received on July 18, 2004, requesting clarification on the issues concerning the soon to expire contracts for telecommunications services of the Manila International Airport Authority ("MIAA"), to wit:

1. Whether or not Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") cover procurement of service contracts for utilities, particularly those that are related to telecommunications services covered by subscription and service agreements; and
2. Whether or not service contracts for utilities may be renewed by the head of the agency considering that no other service provider can supply such requirements.

Service Contracts for Utilities Covered by R.A. 9184 and its IRR-A

In defining the scope and application of R.A. 9184, Section 4 thereof provides that it shall apply to the procurement of infrastructure project, goods, and consulting services by all government agencies, to wit:

This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its department, offices and agencies, including government-owned and/or controlled corporations and local government units, subject to the



provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed. (Emphasis supplied)

It should be noted that the term "Goods" as defined in Section 5(k) of the IRR-A of R.A. 9184 includes general support services which may be needed in the transaction of public businesses or in the pursuit of any government undertaking. As such, contracts for telecommunications services aptly falls within the term "Goods," and should therefore be procured following the rules for the procurement of goods under the IRR-A. Section 5(k) specifically provides as follows:

Goods. Refer to **all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity**, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. (Emphasis supplied)

In this regard, it is our opinion that service contracts for utilities such as telephone lines, cellular phones, internet connection, and two-way radio communications should be procured by the MIAA through public bidding in accordance with the provisions for the procurement of goods provided under R.A. 9184 and its IRR-A.

Conduct of Public Bidding Necessary

Upon the expiration of the service contracts for utilities, the head of the procuring entity cannot categorically renew the contracts; rather, the MIAA should conduct a public bidding for the contracts. This is buttressed by the rule that all procurement should be made through public bidding. However, if justified, such as when only few service providers of highly specialized type of goods or major plant components are known to be available, procurement may be done through Limited Source Bidding under Section 49 of R.A. 9184 and its IRR-A. Section 49 of the IRR-A specifically provides the conditions when procuring entities may employ Limited Source Bidding, to wit:

- a) Procurement of highly specialized types of goods (e.g. sophisticated defense equipment, complex air navigation systems, coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or

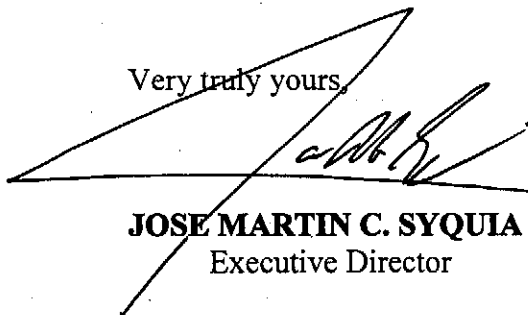
- b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole.

Prudence dictates that service contracts be bid out prior to its expiration taking into consideration the duration of the bidding process as provided under R.A. 9184 and its IRR-A. In the event that the service contracts expire before an award is made, we are of the opinion that only then may the head of the procuring entity extend the services of its incumbent service provider on a periodic basis until such time that an award is made.

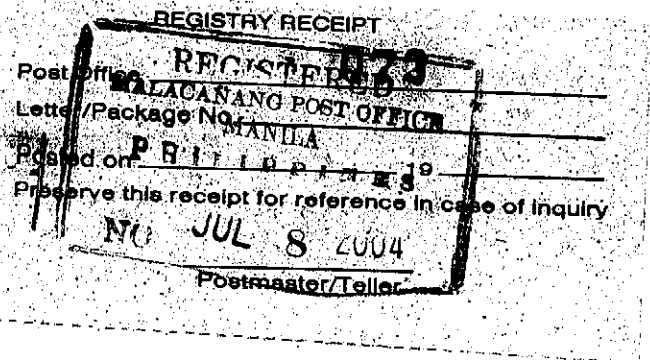
This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director



RESPONSE SHEET FOR PHONE OPINIONS

PhO No. 012-2004Date Received: June 18, 2004Date Called: 6/22/04Requesting Entity: Manila International Airport AuthorityContact Person / Number: GEN. ANGEL ATUVBO 832-2938; R31-6205; R33-1180Issue(s) / Request(s): MR. VIC DIOKNO577-1109833-5478

① Whether or not R.A. 9184 and its IRR-A cover procurement of service contracts for utilities, particularly those that are related to telecommunications services covered by subscription and service agreements.

② Whether or not service contracts for utilities may be renewed by the head of the agency considering that no other service provider can supply such requirements.

Response:

① YES. Upon the enactment of R.A. 9184 and its IRR-A, all procurement activities of Government agencies are governed by such law and rules. It is now an established policy that all Government contracts, shall be awarded through open and competitive bidding, save in exceptional cases provided by law.

② Upon the expiration of contracts for utilities, these services have to be bid out. It must be noted that public bidding is the primary mode of procurement. However, if justified, such as ^{when} there are only few service providers known to be available, MIAAA may procure said services through Limited Source Bidding under Sec. 49. The procuring entity, however, must ensure that such method promotes economy and efficiency, and that the most advantageous price for the Government is obtained.

Remarks: WRITTEN RESPONSE REQUESTED (NPM 0914-2004, July 7, 2004)Assigned to: REY