

**NPM No. 003-2017**

13 March 2017

**MS. CORA LEA A. DELACRUZ**  
*Director IV*  
**COMMISSION ON AUDIT (COA)**  
**NATIONAL GOVERNMENT SECTOR CLUSTER 6**  
Commonwealth Ave., Quezon City

**Re: Funds Received by the United Nations Development Programme (UNDP)  
from the Government of the Philippines (GoP) to Finance UNDP  
Development Support Services**

Dear Director Delacruz:

This refers to your letter regarding the opinion<sup>1</sup> of the Government Procurement Policy Board (GPPB) on the applicability of Republic Act (RA) No. 9184 *vis-à-vis* the provisions of the Standard Basic Assistance Agreement (SBAA) and the Financial Regulations and Rules (FRR) of the UNDP with respect to procurement rules and regulations, thus:

“[T]he GPPB recognizes the provisions of the 1977 SBAA as in faithful observance of the country’s treaty and international obligations – *pacta sunt servanda*, such that procurement by UNDP utilizing contributions or funds received from the GoP, pursuant to the 1977 SBAA is governed by the UNDP-FRR, which embodies the processes, procedures, rules and regulations that the UNDP may adopt in the conduct of its procurement activities to implement identified UNDP development support services.”

Clarification is sought on whether the exemption applies in the case of Government of the Philippines (GoP)-UNDP cost sharing agreements in the implementation of Bottom-up Budgeting (BuB) projects, wherein the GoP (DSWD, for example) transferred funds to the UNDP, with the UNDP contributing only the staff time. Hence, this request for opinion.

We wish to clarify that the opinion issued by the GPPB pertains to the applicability of RA 9184 as regards the contributions or funds received by the UNDP from the GoP pursuant to the SBAA. The opinion contemplates situations where the project to be implemented falls within the scope of the SBAA. It did not, however, discuss the scope and coverage of the said SBAA as we note that the SBAA is an international agreement where resort to its use and the proper determination of its applicability were not touched by the GPPB. (sgd.)

<sup>1</sup> Policy Matter (PM) Opinion No. 01-2015 dated 1 December 2015.

Under Section 4 of RA 9184, any treaty or international or executive agreement affecting the subject matter of the Act to which the Philippine government is a signatory shall be observed. In relation to this, the GPPB is mandated under Section 63(a) of RA 9184 to protect national interest in all matters affecting public procurement, having due regard to the country's regional and international obligations. In compliance with these provisions of RA 9184, the GPPB recognized the provisions of the SBAA in faithful observance of our international obligations (*pacta sunt servanda*). Accordingly, the opinion on the non-applicability of RA 9184 and its IRR to the contributions or funds received by the UNDP from the GoP is premised on the fact that there was a determination that the transfer or contribution of funds was made pursuant to the SBAA.

In this regard, as to your query on whether the GoP-UNDP cost sharing agreements in the implementation of Bottom-up Budgeting (BuB) projects is covered by the opinion stated in Policy Matter (PM) Opinion No. 01-2015, we wish to clarify that the non-applicability of RA 9184 to the contributions or funds received by the UNDP from the GoP depends on a determination that such funds transferred or contributed to the UNDP was made pursuant to the 1977 SBAA. Thus, those transfers and contributions made pursuant to the 1977 SBAA, for those projects similarly situated, are covered in the PM Opinion on the non-applicability of the provisions of RA 9184 and its IRR.

This notwithstanding, we note that in PM Opinion No. 01-2015, the Board categorically noted that request for UNDP's assistance is subject to limitations to be contained in the Project Documents which the parties will conclude, such as, but not limited to, the following:

- a. The Procuring Entity lacks capacity to undertake the specific procurement project;
- b. UNDP is capable of delivering the procurement requirements of the Procuring Entity in an efficient and timely manner; and
- c. The request for assistance involves highly technical or highly complex procurement projects.

Under Paragraph (a) above, the Procuring Entity shall take into consideration its capacity, capability and ability to perform the procurement activities of the agency insofar as its resources are concerned, *i.e.*, administrative, technical, physical, including cost considerations and implications, among others, before deciding to transfer such governmental responsibility to another entity. More importantly, it is in keeping with sound public procurement practice to conscientiously and judiciously prepare and plan for the procurement of the relevant goods, works and consulting services necessary and desirable to address the needs of the procuring entity in the most timely and efficient manner, such that accomplishment of such planning and budgeting synergy will allow the procuring entity to timely procure from the right source, with the right quantity and right quality, and at the right price.

We note that the Philippine Government has its own procurement law, rules and regulations, couched upon the principles of competition, transparency, efficiency, economy and accountability, which can be readily utilized to address government acquisition of goods, civil works and consulting services. (sgd.)

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,  
(sgd.)

~~DENNIS S. SANTIAGO~~  
*Executive Director V*

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