

NPM No. 007-2019

16 April 2019

ATTY. JESUS CLINT O. ARANAS
President and General Manager
Government Service Insurance System
Financial Center, Pasay City

Re: Selection of Third Party Collection Agencies

Dear President Aranas:

This refers to your letter¹ seeking advice as regards the applicability of the provisions of Republic Act (RA) No. 9184² in the selection of third-party collection agencies for outstanding loan balances of inactive members of the Government Service Insurance System (GSIS). Should the said law be inapplicable, you would likewise be guided on the propriety of accrediting said collection agencies.

As represented, the current industry practice to compensate collection agencies is on a *no cure, no pay* basis, which controverts the need for an Approved Budget for the Contract (ABC) under RA No. 9184.

At the outset, it bears stressing that the applicability of the provisions of RA No. 9184 rests mainly on whether procurement will be undertaken by your Office as regards the selection of third-party collection agencies. Procurement is defined as the acquisition of goods, consulting services, or the contracting for infrastructure projects by the procuring entity.³ Acquisition here pertains to the use of public funds by any government agency or instrumentality. It is therefore axiomatic that any undertaking requiring the use of public funds amounts to a procurement activity which, as a general rule, is covered by the provisions of RA No. 9184.⁴

The actual determination of which falls within the Procuring Entity (PE), in this case your Office. The Government Procurement Policy Board cannot supplant this authority of the PE with an opinion on whether the subject activity entails the use of public funds for the acquisition of goods, consulting services or the contracting of infrastructure projects.

Allow us to note as well that the use of a *no cure, no pay* method does not automatically exclude the transaction from the application of RA No. 9184, particularly from the concept of an ABC. The ABC shall be the upper limit or ceiling for acceptable bid prices.⁵ Accordingly, where the amount of payment varies based on the actual loans collected, the PE must ensure that such payment shall not exceed the contract price.

¹ Dated 5 September 2017 and received 7 September 2017.

² Entitled the "Government Procurement Reform Act."

³ Section 5(aa) of RA No. 9184.

⁴ See Non-Policy Matter Opinion (NPM) No. 141-2004, dated 5 November 2004.

⁵ Section 31.1 of the 2016 IRR of RA No. 9184.

Moreover, in crafting the ABC for a procurement activity involving collection of outstanding loans, the PE may consider the estimated value of said collections and associated costs thereof within the implementation period. The Second Edition of the Manual of Procedures for the Procurement of Goods, Infrastructure Projects, and Consulting Services is instructive for this purpose.

Based on the foregoing, the selection of collection agencies which adopts the *no cure, no pay* payment scheme falls within the coverage of the RA No. 9184 and its 2016 IRR if public funds will be spent for this purpose, as determined by the PE. Moreover, the same is not one of the activities excluded from the scope and application of the law and its IRR.⁶

As to the determination on the propriety of the accreditation of collection agencies should the subject undertaking not require the use of public funds and is therefore outside of the ambit of RA No. 9184, the same equally rests upon your wisdom as the implementing agency.

The above opinion was made on the basis of the particular facts presented and circumstances availing, and may not, therefore, be applicable given a different set of facts and circumstances.

We hope to have sufficiently clarified the matter at hand.

Sincerely yours,


BOWENA CANDICE M. RUIZ
Executive Director V 

//ird5

⁶ Sections 4.4 and 4.5 of the 2016 IRR of RA No. 9184.