

NPM No. 23-2019

6 December 2019

BERNARD JONAS TRINIDAD
President
**Governance Commission for GOCCs-
Employees Association**
3/F Citibank Centre, 8741 Paseo de Roxas
Makati City 1226

**Re: Procurement Activities Sourced from Collective Negotiation
Agreement Incentive**

Dear President Trinidad:

This pertains to your letter¹ requesting for opinion on the application of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) in the conduct of procurement activities of the Governance Commission for GOCCs - Employees Association (GCG-EA) funded from the Maintenance and Other Operating Expense (MOOE) savings of the GCG.

As represented, the GCG requested the Department of Budget and Management (DBM) for the approval to utilize the thirty (30) percent allowable FY 2014 MOOE savings to fund various programs/projects mutually agreed by both the GCG management and GCG-EA. It was equally represented that the DBM interposed no objection² to the request provided the actual utilization/disbursement is within the same program/activity/project for the aforesaid purpose, subject to existing budgeting, accounting and auditing rules and regulations.

Subsequently, the GCG management and the GCG-EA entered into a Memorandum of Agreement (MOA),³ which stipulated that the GCG has the duty to transfer the said savings to the GCG-EA with the agreement to (i) utilize the fund solely for purposes agreed upon by both GCG and GCG-EA, and (ii) ensure compliance with procurement laws, accounting and auditing laws, rules and regulations in the disbursement thereof.⁴

At the outset, it bears emphasis that the nature of the funds to be used in the procurement activity is essential in the determination of the applicability of the provisions of RA No. 9184. In the case at hand, the identified basis for the supposed "transfer of funds" from the GCG to the GCG-EA is DBM Budget Circular (BC) No. 2015-002⁵ in

¹ Dated 26 September 2019.

² Dated 24 November 2015.

³ Dated 14 December 2015.

⁴ Article II (Commitments and Undertakings) of the MOA.

⁵ Entitled "Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for FY 2014."

relation to Public Sector Labor-Management Council No. 04, s. 2002,⁶ which authorizes the use of the thirty (30) percent MOOE savings in a given fiscal year to fund projects for the improvement of the employees' working conditions.

However, a perusal of Item 5.1.2 of DBM BC No. 2015-002 shows that it simply provides for the apportionment of the available amount of allowable MOOE savings, particularly the thirty (30) percent which may be used for the improvement of working conditions and/or to be added as part of the Collective Negotiation Agreement (CNA) incentive. There is nothing in the said provision that authorizes the transfer of funds from the agency to its union.

Based on the foregoing, the funds to be used are actually funds appropriated for the GCG, which are therefore public funds. Being public funds, the provisions of RA No. 9184 shall govern.⁷ Relatedly, Section 12 of RA No. 9184 authorizes the Bids and Awards Committee (BAC) to conduct the procurement activities of the agency. The determination of the members of the BAC is subject to the qualification requirements under Section 11 of RA No. 9184 and its 2016 revised IRR, and the approval of the head of the procuring entity (HoPE).⁸ Thus, the participation of the union representative in an agency's BAC is governed by these provisions.

The HoPE is further authorized to outsource the conduct of procurement if it does not have the proficiency or capability to undertake a particular procurement project by requesting other government agencies, as its procurement agent, to conduct the same on its behalf.⁹ This may be done through the execution of a MOA containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules.¹⁰

The existing rules do not, however, allow private entities like public sector unions¹¹ to act as procurement agents,¹² as the Government Procurement Policy Board has yet to issue the rules for this purpose.

In sum, the GCG BAC is the one authorized to undertake the procurement of the projects that the management and union have agreed to be funded from the aforementioned thirty (30) percent allowable MOOE savings. More importantly, the availability and use of the said funds are always subject to budgeting rules and regulations. In this regard, it may be well to note that under DBM BC No. 2016 – 7 and the succeeding issuances on the guidelines for the grant of the CNA incentive, agencies are no longer authorized to use thirty (30) percent of the allowable MOOE savings. Any excess amounts from the allowable MOOE allotments after the payment of the CNA incentive to the employees shall already revert to the General Fund.

⁶ Entitled, "Grant of Collective Negotiation Agreement (CNA) Incentive for the National Government Agencies, State Universities and Colleges and Local Government Units."

⁷ Section 4, RA No. 9184.

⁸ Section 11.2.2 of the 2016 revised IRR of RA No. 9184.

⁹ Section 7.3.3 (a) of the 2016 revised IRR of RA No. 9184.

¹⁰ Non-Policy Matter Opinion No. 134-2017.

¹¹ Public sector unions are created as private organizations having their own legal personality to represent the government employees, which are independent from the employer-agencies, although they are regulated by the Department of Labor and Employment and Civil Service Commission pursuant to Executive Order No. 180, series of 1987, entitled: "Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes."

¹² Outsourcing is provided under Section 7.3.2 (d) in relation to Section 53.6 of the 2009 revised IRR of RA No. 9184, the prevailing rules when the MOA was executed and the fund was transferred to GCG-EA. Note that the provision on outsourcing is subsequently stated under Section 7.3.3 (b) of the 2016 revised IRR.

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,
(sgd.)

ROWENA CANDICE M. RUIZ
Executive Director V

Cc: **SAMUEL G. DAGPIN, JR.**
Chairperson
Governance Commission for GOCCs (GCG)

AMADO N. ABLAO
State Auditor
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