



**NPM No. 017-2016**

21 March 2016

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: Applicability of Republic Act No. 9184**

Dear [REDACTED]:

This refers to your letter requesting for an opinion on whether the proposed Memorandum of Agreement (MOA) for the use of Automated Teller Machines (ATMs) involving a revenue sharing scheme is a procurement activity within the coverage of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

As represented, PostBank received a proposal from a private supplier to provide ATMs to be deployed in selected locations as agreed upon by the parties. This includes placement of ATMs in on-site locations, which are within the premises of PostBank branches, and in off-site locations outside the premises of the bank which will be shouldered by the private supplier.

PostBank, pursuant to the MOA will not incur expenditures for the supply of the ATMs, which remains in the ownership of the private supplier. The bank, however, will shoulder costs for the installation and commissioning of the ATMs, project management, and other incidental expenses necessary for its operation in on-site locations. In this regard, PostBank and the private supplier shall implement a revenue sharing scheme in which the parties shall be respectively entitled to 60% and 40% of the revenues earned by the ATMs in on-site locations, and 35% and 65%, respectively, for revenues earned from off-site locations. The agreement will have a term of five years starting from the last ATM installation and may be renewed for another five years. It is under this context that our opinion is sought.

Procurement is defined under Section 5(aa) of the IRR of RA 9184 as the acquisition of goods, consulting services, and the contracting for infrastructure projects by government agencies, including the lease of goods and real estate. Such acquisition or lease entail use of public funds, regardless of source<sup>1</sup>, in accordance with the methods and procedures laid down in the IRR. In this regard, RA 9184 and its IRR apply to cases where public funds are allocated and utilized for government procurement activities. Hence, if the government transaction or activity does not involve use of public funds, such transaction or activity is not within the purview and coverage of RA 9184 and its IRR.<sup>2</sup>

<sup>1</sup> Section 4.4 of the IRR of RA 9184.

<sup>2</sup> NPM No. 60-2013, dated 26 June 2013.

Accordingly, if the proposed MOA involving the use of ATMs does not involve public expenditure on the part of PostBank, it is our considered view that RA 9184 and its associated rules and regulations are inapplicable. However, we note that the proposed MOA is akin to a Joint Venture Agreement between PostBank and the private supplier. For this reason, the *Revised Guidelines and Procedures for Entering into Joint Venture Agreements between Government and Private Entities*<sup>3</sup> issued by the National Economic and Development Authority (NEDA) is the relevant issuance under the circumstances as it prescribes the rules, guidelines and procedures for Joint Venture Agreements between private entities and government corporations, particularly Government-Owned and/or Controlled Corporations (GOCCs), Government Corporate Entities (GCEs), Government Instrumentalities with Corporate Powers (GICPs), Government Financial Institutions (GFIs), and State Universities and Colleges (SUCs).

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.

(sgd.)

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

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<sup>3</sup> Approved 3 May 2013.