



Republic of the Philippines
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE



NPM No. 023-2016

23 March 2016

[REDACTED]

Re: Proposed DBP Venture Capital Program (VCP)

Dear [REDACTED]:

This refers to your letter seeking categorical confirmation as to whether the divestment of equity process through the proposed exit mechanisms under the DBP-VCP¹ is covered by Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR).

We wish to clarify that RA 9184 and its IRR 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 departments, offices and agencies, including Government-Owned and/or -Controlled Corporations (GOCCs) and Local Government Units (LGUs).² As there is no question that the DBP is considered as a GOCC³ that is covered by RA 9184 and its IRR, the pivotal issue at hand is whether the divestment of equity process being proposed by the DBP is considered as a procurement activity.

Procurement is defined as the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity.⁴ In the process of acquisition, public funds are disbursed by the government. Thus, in our previous opinion, we stated that for as long as public funds are utilized or is contemplated to be spent for any procurement activity, it shall, by force, fall within the ambit of the present procurement law.⁵ Accordingly, there are two important elements to be considered in determining whether an activity is procurement that is covered by RA 9184 and its IRR, thus:

¹ Copy of the Proposed Operating Policy Guidelines for the DBP Venture Capital Program was attached to the letter-request.

² Section 4 of RA 9184 and its IRR.

³ <http://www.gov.ph/directory/government-owned-andor-controlled-corporations/> accessed on 26 March 2016, 4:09:54 pm.

⁴ Section 5(n) of RA 9184.

⁵ NPM No. 141-2004 dated 5 November 2004.

1. the activity involves the acquisition of goods, consulting services, and the contracting for infrastructure projects; and
2. public funds are utilized or is contemplated to be spent.

As opposed to investment which signifies the delivery of possession of anything to another, divestment connotes taking away and/or withdrawal of such possession and title.⁶ Consistent with this definition, a careful perusal of the divestment of equity process under the DBP-VCP reveals that the proposed exit mechanisms involve the relinquishment by the DBP of its equity investment from its partner-enterprise either through Call Option of the Entrepreneur, Sale to Third Party, Initial Public Offering and Exit with Loan Extension. These mechanisms contemplate a disposal of DBP's equity investment and the transfer of ownership to a partner-enterprise or a third party through sale or loan facility. Clearly, in this divestment equity process, there is neither acquisition of goods, consulting services, and the contracting for infrastructure projects, nor the disbursement of public funds.

In this regard, considering that divestment of equity process through the proposed exit mechanisms under the DBP-VCP does not involve an acquisition of goods, consulting services, and the contracting for infrastructure projects utilizing public funds, such divestment equity process is not considered as procurement, and considered to be beyond the coverage of RA 9184 and its IRR.

For your guidance, COA Circular No. 86-264, dated 16 October 1986 provides for the *General Guidelines on the Divestment or Disposal of Assets of Government-Owned and/or Controlled Corporations, and their Subsidiaries*. Since the activity of DBP entails divestment of equity, we refer to the provisions of this Guidelines, subject to existing government accounting and auditing rules and regulations on the matter.

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

//ld3

⁶ COA Circular No. 89-296, dated 27 January 1989 citing Black's Law Dictionary, Rev. 4th edition; Webster's New School/Office Dictionary.