

NPM No. 127-2015

27 November 2015

[REDACTED]

Re: Procurement of Publication Services

Dear [REDACTED]

This refers to your letter dated 3 November 2015 requesting for guidance on whether a student publication is exempted from the coverage of Republic Act (RA) 9184, specifically in contracting the services of a printing press.

It is represented that the BSU, as a state-operated Institution, allowed its students to exercise their right to free expression through the official student publication, Pacesetter, with its editorial board composed of students, under a Faculty Adviser. Funds for the operation of the Pacesetter are collected from the students during the enrolment and registration for every term. These funds are deposited in the University's account maintained at the Land Bank of the Philippines.

It has been the practice of the University to release the amount needed for the expenses in the operation of the Pacesetter to the Editorial Board of the publication upon the submission of their proposed budget for the Semester. Liquidation for the amount released is submitted by the Editorial Board prior to the release of the budget for the following Semester. The editorial board is given free hand in determining which Printing Press is contracted for the printing of issues distributed to students. Hence, this request for opinion.

We wish to stress that Section 4.1 of the Implementing Rules and Regulations (IRR) of RA 9184 provides that "[T]his IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GOP, including government-owned and/or -controlled corporations (GOCCs), government financial institution (GFIs), **state universities and colleges (SUCs)**, and local government units (LGUs)." (Emphasis supplied)

In this connection, Section 5 of RA 9184 and its IRR, define "procurement," as the acquisition of goods, consulting services, and the contracting for infrastructure projects by the procuring entity. It cannot be denied that the said transaction involves acquisition of services for the government since Goods as defined in the Implementing Rules and Regulations (IRR) of RA 9184 states that:

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Goods. Refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term “related” or “analogous services” shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity.

Consequently, the law and its IRR cover the acquisition of the government, which contemplates expenditure of public funds the regulation of which is the primary consideration for the enactment of the law. To reiterate, RA 9184 contemplates projects to be funded by public funds.¹

In this case, the said transaction involves public funds,² *i.e.* collections from enrolment and registration of students, going into the coffers of the government, and deposited under the account of BSU, which are maintained in its depository³ bank. Thus, when the Editorial Board contracts a supplier for publishing services, this means that public funds will be eventually disbursed from the treasury.

It is best to emphasize that public bidding, as the general mode of procurement under RA 9184 and its IRR, is held for the protection of the public interest, as it ensures transparency and open competition among the participating bidders. The conduct of public bidding in the selection of a Publisher will prove to be more advantageous for BSU, considering that the same will enable the SUC to acquire the Publisher’s services at a fair and reasonable price and will likewise ensure that overpricing, favoritism and other perceived unfair and unlawful practices will be obviated.

However, as an exception, in order to promote efficiency and economy, Article XVI of RA 9184 sanctions resort to alternative methods of procurement upon compliance with the applicable condition/s for each modality, including the approval of the Head of the Procuring Entity; and the most advantageous contract and price are obtained for the government.⁴

Based on the foregoing, since the acquisition of printing services for the student publication involves expenditure of public funds, it is our considered view that such activity is within the coverage of RA 9184 and its IRR.

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,

¹ *Department of Foreign Affairs and Banko Sentral ng Pilipinas v. Hon. Franco T. Falcon and BCA International Corporation*, G.R. No. 176657, 1 September 2010.

² **Government Funds** includes public moneys of every sort and other resources pertaining to any agency of the government (Sec.3(2), PD 1445)

³ **Depository** means any financial institution lawfully authorized to receive government moneys upon deposit. (Sec. 3(6), PD 1445).

⁴ Section 48.1 of the IRR of RA 9184.

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.)

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

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