



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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OFFICE OF THE SECRETARY

DLG OPINION NO. 9 S. 2006

17 February 2006

GOVERNOR JOSE R. CABALLERO
Provincial Capitol Building
Cabidanan, Nabunturan
Compostela Valley

Dear Governor Caballero:

This pertains to your request for this Department's legal opinion on whether or not authority of the Sangguniang Panlalawigan is a condition precedent before the Governor can enter into a contract with a winning bidder as determined by the Bids and Awards Committee after going through the process of procurement mandated by RA 9184, otherwise known as the "Government Procurement Reform Act". Your instant query is anchored on the facts you have presented which are reproduced in toto, viz:

"The Provincial Government of Compostela Valley pursuant to the rules and regulations for procurement activities opened the bids for Purchase Request Number 05-1275, entitled: "For the Purchase of Provision of Security and Protective Services (Contract for Security Services, for brevity) on May 9, 2005 but was deferred to May 20, 2005 due to requests for reconsideration.

On May 27, 2005, the Bids and Awards Committee (BAC) recommended to the Honorable Governor to award the said contract in favor of the winning bidder, the Columbia Security Agency, which recommendation was then duly approved by the Honorable Governor on June 24, 2005.

In the meantime, on June 17, 2005, the BAC through Anesio M. Ranario, Provincial Administrator, endorsed to the SANGGUNIANG PANLALAWIGAN (SP) the contract for the purpose of seeking authority in order for the governor to sign the same. Up to the present, no contract has been signed by the Governor in view of the absence of authority from the Sangguniang Panlalawigan, since the Sangguniang Panlalawigan is just sitting on it for no apparent reasons."

On these facts, you have interposed the following queries, to wit:

1. "Is there a prescriptive period that the Sangguniang Panlalawigan should ~~act~~ on request for authority of the governor to sign a contract, otherwise, said request is deemed approved and that governor can now sign the contract sans SP authorization to prevent prejudice to the public service?"
2. In the same manner, I would like to request the legal opinion of the DILG how tenable is the argument of some legal minds that there is no need to seek authorization from the Sangguniang Panlalawigan on contracts arising from the procurement process for the following reasons."

In addressing the aforementioned issues, it is imperative to cite certain provisions under the Local Government Code of 1991 (RA 7160) and the Government Procurement Reform Act (RA 9184), for your better appreciation of our opinion.

A LOCAL GOVERNMENT CODE provisions:

"SEC. 22. (c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall." (underlining ours)

"SEC. 465 (b) (1) (vi). The provincial governor shall: xxx Represent the province in all its business transactions and sign in its behalf all bonds, contracts, and obligations, and such other documents upon authority of the sangguniang panlalawigan or pursuant to law or ordinance."

B GOVERNMENT PROCUREMENT REFORM ACT provisions:

"SEC. 5. (a) Approved Budget for the Contract - refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations, in the case of National Government Agencies; the Corporate Budget for the contract approved by the governing Boards, pursuant to E.O. No. 518, series of 1979, in the case of Government-Owned and/or Controlled Corporations, Government Financial Institutions and State Universities and Colleges; and the Budget for the contract approved by the respective Sanggunian, in the case of Local Government Units." (underlining ours)

"SEC. 5. (j) Head of the Procuring Entity - refers to (i) the head of the agency or his duly authorized

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official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or controlled corporations; or (iii) the local chief executive, for local government units. Provided, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency." (underlining ours)

"SEC. 37. Notice and Execution of Award.- Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

Within ten (10) calendar days from receipt of the Notice of Award, the winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contract shall be given a maximum of twenty (20) calendar days to approve or disapprove it.

In case of government-owned and/or controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor."

"SEC. 76. xxx This law amends Title Six, Book Two of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 xxx."

THE DEPARTMENT'S OPINION

Section 22 (c) of RA 7160 sets out the general rule, i.e., that no contract may be entered into by the Local Chief Executive (LCE) without a prior sanggunian authorization. However, emphasis is made on the opening phrase thereof which states "unless otherwise provided in this Code", which indubitably is the exception to the

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general rule. Therefore, Section 22 (c) of RA 7160 is not a hard and fast rule as it admits certain exceptions.

Precisely, an exception is found in Section 465 (b) (1) (vi) of RA 7160. A closer scrutiny of the said provision enumerates the duties of the Governor in representing the province in the latter's business transactions as well as the power of the Governor to sign on behalf of the province pertinent documents. Along that line, it is clear that Section 465 (b) (1) (vi) of the Code empowers the Governor to represent the province in all its business transactions and sign in its behalf pertinent documents subject to the following conditions, to wit:

1. UPON AUTHORITY OF THE SANGGUNIANG PANLALAWIGAN; or
2. PURSUANT TO LAW; or
3. PURSUANT TO ORDINANCE.

It must be stressed that the three (3) authorities mentioned above are separated by the word "or", and such word is a "disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated. It should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word" (People vs. Martin, 39 SCRA 340; Katindig vs. People, 74 Phil. 45). Likewise, in its elementary sense, "or" as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or prepositions indicating a choice of either (Martin, Statutory Construction, 6th Ed., p. 88).

Ergo, the Governor may sign bonds, contracts, obligations and such other documents even without a prior authorization from the Sangguniang Panlalawigan, for as long as there is either a LAW or ORDINANCE that authorizes him/her to do so. The said two (2) other authorities serve as the exception to the general rule found in Section 22 (c) of the Local Government Code.

The foregoing having been said, we now discuss the provisions of RA 9184, cited earlier, but allow us first to tackle Section 76 (Repealing Clause) of RA 9184.

As explicitly stated, RA 9184 amended Title Six, Book Two of RA 7160, the latter referring to the rules and procedure anent the property and supply management in local government units. Such being the case, since majority of the provisions in Title Six, Book Two of RA 7160 are inconsistent with the provisions of RA 9184, the latter law *ipso facto* supercedes the former. Therefore, as regards procurement of goods or supplies in the local level, RA 9184 is now the governing rule.

At this juncture, emphasis should be made on the following:

1. There should be a Budget for the contract as approved by the respective sanggunians in its annual or

supplemental appropriations (Sec. 5 [a], RA 9184, supra);

2. That the Head of the Procuring Entity is the Local Chief Executive concerned (Sec. 5 [j] of RA 9184, Ibid);
3. That after the recommendation of the Bids and Awards Committee is accepted and approved by the Head of the Procuring Entity, the latter is under obligation to issue the Notice of Award to the winning bidder (Sec. 73 [1], RA 9184, Id.); and
4. After receipt of the Notice of Award, the winning bidder shall formally enter into contract with the procuring entity (Sec. 37 [2], RA 9184, Id.), the latter being represented by no less than the Local Chief Executive.

It is worthy to mention that RA 9184 never stated that the Head of the Procuring Entity still needs to secure an authorization from his/her sanggunian, rather, the law mandated the head of the procuring entity to act accordingly within the given periods of time.

We are, therefore, of the view that once a budget for a particular contract is already authorized by the sangguniang panlalawigan via an annual or supplemental appropriation ordinance, the governor, as head of the procuring entity, no longer needs to secure any further authorization from his/her sanggunian to enter into a contract with the winning bidder, as it could not have been the intent of our Congress to paralyze local government projects/contracts through circuitous or redundant procedures. Anyway, the authority of the governor was pursuant to law.

We hope we have enlightened you on the matter.

Very truly yours,


WENCILITO T. ANDANAN
Acting Secretary

Legal:87/La

copy furnished:

The Regional Director
DILG Region XI

