



REPUBLIC OF THE PHILIPPINES  
**DEPARTMENT OF BUDGET AND MANAGEMENT**  
GOVERNMENT PROCUREMENT POLICY BOARD  
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TSO NPM No. 08-2003

May 15, 2003

**ATTY. ROBERT S. MARTINEZ**  
Director  
General Administrative Service  
Department of Trade and Industry ("DTI")  
Fourth Floor (4<sup>th</sup> Flr.) Trade and Industry Building  
361 Senator Gil J. Puyat Avenue  
Makati City 1200

**Re : Applicable Procurement Procedure Pending Approval of the IRR  
of R.A. 9184**

Dear Atty. Martinez:

This refers to your letter dated April 21, 2003, which we received through facsimile on April 24, 2003, where the following queries were raised, to wit:

1. Which law shall be followed pending the finalization of the new Implementing Rules and Regulations ("IRR") of Republic Act No. 9184 ("R.A. 9184"), otherwise known as the "Government Procurement Reform Act?"
2. If ever the IRR of R.A. 9184 would become final, what law shall govern an on-going procurement activity, if the advertisement of the Invitation to Apply for Eligibility and to Bid is issued prior to the effectivity date of the new IRR?

**Applicable Law Pending Finalization of the IRR of R.A. 9184**

R.A. 9184 was signed by President Gloria Macapagal Arroyo on **January 10, 2003**, and was published the following day or on **January 11, 2003**, in two (2) newspapers of general circulation namely, Manila Times and Malaya. R.A. 9184 took effect on **January 26, 2003** pursuant to Section 78 thereof, which we quote: /

Sec. 78. *Effectivity Clause* - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

It must be noted, however, that although there are self-executing provisions in R.A. 9184, the same cannot be fully implemented until its IRR is finally approved by the President and published for dissemination. For this reason, we believe that the procedures embodied in Executive Order No. 40, Series of 2001 ("E.O. 40"), and its IRR shall still apply until the IRR of R.A. 9184 shall have been finally approved, provided that the provisions of the former law are not in direct conflict with the clear self-executing provisions of the latter law.

### Governing Law upon On-going Projects

As already discussed, the provisions of E.O. 40 and its IRR shall apply to on-going procurement activities or those which were already commenced prior to the effectivity of R.A. 9184 and its IRR. This is in consonance with the language of Article 4 of the Civil Code of the Philippines, which provides:

Art. 4. Laws shall have no retroactive effect, unless the contrary is provided.

Since nothing in R.A. 9184 expressly provides for the retroactive application of its provisions, the general rule shall be reckoned with, that is, its provisions shall be applied prospectively. Statutory construction dictates that statutes are not to be construed to have a retroactive effect so as to affect pending projects or endeavors, unless such intent is expressly declared or clearly and necessarily implied from the language of the legislative enactment. (*See Ancajas v. Jakosalem*, 24 Phil. 220; *Segovia v. Noel*, 47 Phil. 543; *Espiritu v. Cipriano*, 55 SCRA 533; and *Nilo v. Court of Appeals*, 128 SCRA 519) Hence, laws or statutes shall generally be applied in a prospective manner, and so it is with the R.A. 9184.

In view of the foregoing, we believe that all on-going procurement activities, including those for which the Invitation to Apply for Eligibility and to Bid were already advertised prior to the effectivity of the IRR of R.A. 9184, shall be governed by the laws, rules and regulations applicable at that time, *i.e.* E.O. 40 and its IRR, except where these are contrary to the clear self-executing provisions of R.A. 9184.

We trust that this clarifies matters.

Very truly yours,

  
JOSE LUIS C. SYQUIA  
Executive Director

#### REGISTRY RECEIPT

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