



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
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TSO NPM No. 019-2003

August 27, 2003

MAJ. NILO ROSARIO S. VILLARTA
JAGS(PN)
Legal Officer, AFPBAC for Philippine Navy
Modernization Projects
Camp General Emilio Aguinaldo, Quezon City

Re : **Applicability of R.A. 9184**

Dear Maj. Villarta:

This refers to your letter dated August 19, 2003, which we received through facsimile on even date, requesting for an opinion/advice as to what law or regulation to be applied in public biddings being conducted by the Armed Forces of the Philippines ("AFP") pending approval of the Implementing Rules and Regulations ("IRR") of Republic Act No. 9184 ("R.A. 9184"), otherwise known as the "Government Procurement Reform Act."

**Applicability of R.A. 9184 and
Prior Procurement Laws**

Although R.A. 9184 has already been signed by her Excellency President Gloria Macapagal Arroyo on January 10, 2003 and became effective on January 26, 2003, the said legislative enactment cannot be applied in its totality without its IRR. In consonance with this, we wish to inform your office that even though the proposed IRR of R.A. 9184 has already been finalized by the Government Procurement Policy Board ("GPPB") and the Joint Congressional Oversight Committee ("JCOC") on July 11, 2003, the same has not yet been approved by the President. Hence, even if there are self-executing provisions in R.A. 9184, the same cannot be fully implemented unless and until the IRR therefore has been finally approved by the President and published for dissemination. In other words, legally speaking, as of this writing there is no IRR yet for R.A. 9184 to be observed by procuring entities.

It is for the above reason that we apprise your office that during the 3rd Meeting of the GPPB on May 26, 2003, the members unanimously agreed on the following:

1. Government agencies are justified in applying Executive Order No. 40, series of 2001 ("E.O. 40"), and its IRR, pending the approval of the IRR of R.A. 9184; and
2. A provision should be included in the Transitory Clause of the draft IRR of R.A. 9184 that in cases where the invitations for bids were issued after the effectivity of R.A. 9184 but before the effectivity of its IRR, procuring entities may continue adopting the procurement procedures embodied in E.O. 40 and its IRR, or other applicable procurement laws, rules and regulations.

The need for the foregoing provisions was due to the fact that R.A. 9184 did not provide for a transitory provision that would govern government procurement during the *interim* or until its IRR is approved by the President. Moreover, although Section 76 of R.A. 9184 repeals E.O. 40 and its IRR, the same cannot be effected until the IRR of R.A. 9184 is issued, because otherwise, no procedure would exist to govern public procurement, a situation that was not intended by R.A. 9184.

In sum, pending approval by the President of the IRR of R.A. 9184, we believe that procuring entities, such as the AFP, may still utilize the provisions of E.O. 40 and its IRR or other applicable procurement laws, rules and regulations in the conduct of its public procurement.

We trust that this clarifies matters.

Very truly yours,

Jose Luis C. Syquia
Acting Executive Director

Copy furnished:

Honorable EMILIA T. BONCODIN
Secretary
Department of Budget and Management
Chairperson
Government Procurement Policy Board

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