



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Unit 1103 Taipan Place, Emerald
Ave., Ortigas Center, Pasig City,
1605 Philippines
Tel.: 687-4853 to 55
Fax: (632) 638-3495

TSO NPM No. 023-2003

October 2, 2003

Honorable CARMELO J. LOCSIN
City Mayor
Ormoc City

Attention : Engr. Raul Cam
Acting City Administrator

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

Dear Mayor Locsin:

This refers to your letter dated October 1, 2003, which we received through facsimile on the same date, where the following query was raised, to wit:

Whether or not Executive Order No. 40, Series of 2001 ("E.O. 40"), may still be used until such time that the IRR of Republic Act No. 9184 ("R.A. 9184") is approved.

This request was made in connection with the procurement of consultancy services of your office.

Applicability of E.O. 40

Although R.A. 9184 was signed into law 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 Implementing Rules and Regulations ("IRR"). In consonance with this, we wish to inform your office that the IRR Part A ("IRR-A") of R.A. 9184 was finalized by the Government Procurement Policy Board ("GPPB") and the Joint Congressional Oversight Committee ("JCOC") on July 11, 2003, and that it has already been approved by the President through Memorandum Order No. 119,

dated September 18, 2003. We wish to inform your office further that the IRR-A of R.A. 9184 was published in two (2) newspapers of general nationwide circulation, namely, Manila Times and Malaya, on **September 23, 2003**. As such, in accordance with Section 78 of the said IRR-A, it "shall take effect fifteen (15) calendar days after its publication in the Official Gazette or in a newspaper of general nationwide circulation."

In this regard, please note that IRR-A of R.A. 9184, under Section 77 thereof, provides as follows:

Section 77. Transitory Clause

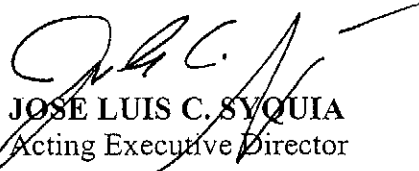
In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

Based on the above-quoted provision, if the Invitation to Bid for the procurement of consulting services was advertised by your office prior to the effectivity of the IRR-A of R.A. 9184 but after the effectivity of R.A. 9184, we believe your office has sufficient legal basis in applying the provisions of Executive Order No. 40, Series of 2001 ("E.O. 40"). However, if the Invitation to Bid for the said procurement has not yet been advertised to this date, we suggest that the same be made after the effectivity of IRR-A, particularly on **October 8, 2003**, in view of the above-quoted Section 78 thereof, so that it may completely fall within the coverage of R.A. 9184.

We trust that this clarifies matters.

Very truly yours,


JOSE LUIS C. SYQUIA
Acting Executive Director