

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos.: (02) 735-4962 / (02) 736-5758

TSO NPM No. 002-2004

January 5, 2004

ATTY. NORMITA L. VILLANUEVA, CESO II

Executive Director
Career Executive Service Board (CESB)
No. 3, Marcelino Street, Holy Spirit Drive,
Diliman, Quezon City 1127

**Re : Development of the new Career Executive Service
Performance Evaluation System by the Career Executive
Service Board through Limited Source Bidding**

Dear Atty. Villanueva:

This refers to your letter dated October 21, 2003, which we received on October 24, 2003, where the following query was raised, to wit:

1. Whether or not the Career Executive Service Board ("CESB") may continue to undertake the development of the new Career Executive Service Performance Evaluation System ("CESPES") through the process of Limited Source Bidding pursuant to the Implementing Rules and Regulations of Executive Order No. 40, despite full effectivity of Republic Act No. 9184 (R.A. 9184) on October 8, 2003;
2. Whether or not another bidding process may be conducted in case the project would call for additional funds to finance additional requirements so as to meet such contingency.

Applicability of E.O. 40

In our reply under TSO NPM No. 021-2003 to your previous query regarding the same issue, dated September 1, 2003, we mentioned that although R.A. 9184 became effective on January 26, 2003, the said legislative enactment cannot be applied in its totality without its IRR and that, the then proposed IRR-A of R.A. 9184 has not been approved by the President. In this regard, we wish to inform your office that the IRR Part A ("IRR-A") of R.A. 9184 has been approved by the President through Memorandum Order No. 119, dated September 18, 2003. We wish to inform your office further that the said 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, and became effective on **October 8, 2003**. This is in accordance with Section 78 of the said IRR-A, which provides as follows:

Section 78. Effectivity Clause

This IRR 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.
(Emphasis supplied)

Based on the above-quoted provision, if the Invitation to Bid was advertised by your office prior to the effectivity of IRR-A of R.A. 9184 but after the effectivity of R.A. 9184, your office has sufficient legal basis to apply the provisions of E.O. 40. On this matter, we made an inquiry from your office as to when the Invitations to Bid were actually posted by your office, and we were informed by Ms. Azaleah B. Tiongson, Executive Assistant II of the Performance Evaluation Service of your agency, that there was no posting made and that the Invitations to Bid were just sent out by your office. As such, it appears that the issuance and posting of the Invitations to Bid required under the provisions of E.O. 40 and its IRR, then effective, were not complied with.

In consonance with this, we quote Section 14.2.3 of the IRR of E.O. 40 and its counterpart provision under Section 21.2.4 of IRR-A of R.A. 9184, both of which provide that:

For alternative methods of procurement as provided for in Section 35 of these IRR/Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with: **Provided, however, That posting shall be made in the website of the agency concerned, if available, the EPS, and posted at any conspicuous place reserved for this purpose in the premises of the agency concerned**, as certified by the head of the BAC Secretariat of the agency concerned, during the same period as above. (Emphasis supplied)

Considering that the invitation to bid has not yet been posted to this date and that your agency is just about to launch the pre-bid conference, we suggest that the said posting be made in accordance with the above-quoted provision of the IRR of E.O. 40 regarding *Limited Source Bidding*, the alternative method of procurement utilized by your agency in undertaking the said project.

Conduct of Another Bidding Process to Meet Contingency

As regards your query on whether or not your agency may conduct another bidding process in case the approved budget for the contract would be insufficient to meet additional requirements for the project, please be guided by the relevant provision under the IRR of E.O. 40, specifically section 4.1 thereof, which we quote hereunder:

Each agency shall judiciously prepare, maintain and update an Agency Procurement Management Plan (APMP) for all its procurements, that shall include, for each individual project, a Project Procurement Management Plan (PPMP). x x x (Emphasis supplied)

Moreover, IRR-A of R.A. 9184 has a counterpart provision on this issue, specifically section 7.1 thereof:

All procurement should be within the approved budget of the procuring entity and **should be meticulously and judiciously planned by the procuring entity concerned.** x x x (Emphasis supplied)

As such, the procuring entity should have **meticulously and judiciously planned**, as the law is expressly worded, all the terms, conditions and specifications in all its procurement activities before pushing through with the bidding process. The winning bidder cannot provide for additional requirements that would need additional funds for the project after the bidding was conducted. Hence, we believe that the remedy is to declare a failure of bidding and supplement for the Approved Budget for the Contract ("ABC") from other budgetary items in the General Appropriations Act .

Thus, it is our advice that before starting over again with the bidding process as regards the said project, your agency should be able to foresee all the possible financial needs of the project and in accordance with such, update the Agency Procurement Management Plan (APMP) and the Project Procurement Management Plan (PPMP) corresponding to the said project, while ensuring that the ABC is consistent with the appropriations for the project authorized in the GAA and/or continuing appropriations.

With the foregoing elucidations, we trust that our opinion provided the CESB the needed information in the proper conduct of its development of a new Career Executive Service Performance Evaluation System (CESPES) for government executives in the managerial level of the Philippine Civil Service.

Please note that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts and circumstances.

Very truly yours,


ESTANISLAO C. GRANADOS
Acting Executive Director