

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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TSO NPM No.003-2004

January 5, 2004

MR. RAMON F. CORREA

President and Chairman
CROWD, Incorporated
J.P. Rizal Street, Paliwas
Obando, Bulacan

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

Dear Mr. Correa:

This refers to your letter to Undersecretary Luis C. Liwanag II of the Department of Budget and Management (DBM), dated September 9, 2003, which was referred to us on October 24, 2003, for appropriate action. Your letter raised the following issue:

Whether or not the bidding conducted and the award made by LWUA (Local Water Utilities Administration) for an P80 million project on April 20, 2003 under Executive Order No.40 ("E.O. 40") series of 2001, is legal and valid.

This issue was raised in connection with Obando WSS Comprehensive Improvement Project (the "Project").

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 was 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, having been published in two (2) newspapers of general nationwide circulation, namely Manila Times and Malaya, on September 23, 2003, became effective on **October 8, 2003**, in accordance with Section 78 of the said IRR-A.

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


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, considering that the award for the Obando WSS Comprehensive Improvement Project was made by LWUA on April 20, 2003, it is apparent that the Invitations to Bid were sent out by LWUA prior to the effectivity of the IRR-A of R.A. 9184 but after the effectivity of R.A. 9184. As such, we believe that the bidding conducted by LWUA on the aforesaid Project was duly covered by E.O. 40. Furthermore, assuming that the procedures in E.O. 40 and its IRR were faithfully applied, we believe that any award made thereunder for the Project is valid.

We trust that this clarifies matters.

Very truly yours,


ESTANISLAO C. GRANADOS
Acting Executive Director

Copy furnished:

Honorable LUIS C. LIWANAG II
Undersecretary for Legal and Legislative Service,
Administrative Service and Financial Service
Department of Budget and Management