

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
Technical Support Office

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City  
Telefax Nos. (02) 900-6741 to 44*

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**NPM No. 003-2005**

January 13, 2005

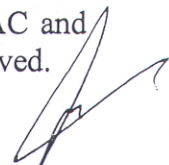
**ATTY. ANTONIO P. RELOVA**  
Provincial Attorney  
Office of the Provincial Attorney  
New Capitol Building, Sta. Cruz,  
Laguna

**Re : Delegation of Authority for the Preliminary Examination of  
Bids and Grant of Honoraria**

Dear Atty. Relova:

This refers to your letter dated 08 December 2004, which we received on 05 January 2005, requesting clarification on the following concerns in connection with Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A):

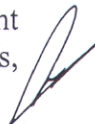
1. Whether the authority to conduct the preliminary examination of bids may be delegated by the Bids and Awards Committee (BAC) to its Secretariat;
2. Whether observers may be given honoraria for their participation in the procurement process; and
3. Whether compensation tax may be collected from the BAC and the Technical Working Group members for honoraria received.



## Delegation of Authority for the Preliminary Examination of Bids

R.A. 9184<sup>1</sup> and its IRR-A<sup>2</sup> categorically vests upon the BAC the authority to determine each bidder's compliance with the required documents for purposes of eligibility. Such determination is conducted using non-discretionary "pass/fail" criteria wherein the BAC merely checks whether a particular requirement is present, missing, incomplete, or patently insufficient which makes the process very simple and efficient.

Moreover, Section 14.1 of the IRR-A enumerates the specific functions and responsibilities which the BAC Secretariat may perform, to wit:

1. Provide administrative support to the BAC;
  2. Organize and make all necessary arrangement for the BAC meetings;
  3. Attend BAC meetings as Secretary;
  4. Prepare Minutes of the BAC meetings;
  5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
  6. Assist in managing the procurement processes;
  7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
  8. Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section of this IRR-A;
  9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
  10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.
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<sup>1</sup> Section 30

<sup>2</sup> Section 30.1

This provision limits the responsibilities of the BAC Secretariat to exclusively clerical and secretariat functions. While it is limited to these functions, the conduct of a preliminary examination of bids where discretion and sound judgment is required cannot be considered as clerical or secretariat in nature; therefore, outside the functions of the BAC Secretariat.

Based on the foregoing, we are of the opinion that the BAC cannot delegate the authority expressly vested upon it by R.A. 9184 and its IRR-A to another entity such as the BAC Secretariat. However, this does not preclude the BAC from assigning to its Secretariat the mechanical act of opening and examining the presence or absence of the required documents of the bidders during the preliminary examination of bids provided such act is done in their presence and under their direct instruction and supervision.

### **Grant of Honoraria to Observers**

Observers are invited in all stages of the procurement process in order to enhance transparency therein,<sup>3</sup> with the general responsibility of checking if each stage of the procurement process was conducted in accordance with the provisions of R.A. 9184 and its IRR-A.

It is imperative, then, for observers to maintain independence from any influence the body it monitors may assert so that the integrity of its observations will not be compromised or tainted with bias. To ensure this independence, we are of the opinion that observers should not be granted honoraria by the procuring entity for its participation in the procurement process.

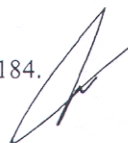
This view is strengthened by Section 15 of R.A. 9184 and its IRR-A which categorically provides that payment of honoraria may be granted to the members of the Bids and Awards Committee (BAC), BAC Secretariat, and Technical Working Group. It will be noticed that in the enumeration of persons who may be granted payment of honoraria, observers are not included. Thus, this silence by R.A. 9184 and its IRR-A may be construed to mean that the law meant to exclude observers from the payment of honoraria.

### **Collection of Compensation Tax for Honoraria Received**

In as much as we would want to clarify you on the propriety of collecting compensation tax for honoraria received by government personnel involved in government procurement, we are of the view that this office is not the proper authority to render opinion on this matter.

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<sup>3</sup> Section 13.1, Implementing Rules and Regulations Part A, Republic Act 9184.

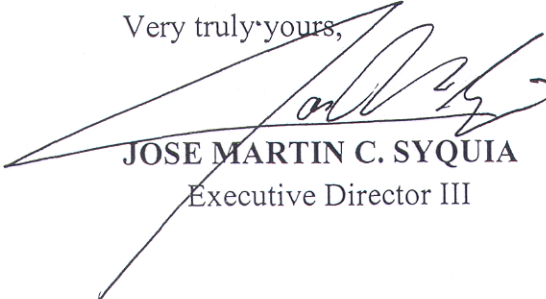


To address your concern, you may wish to reach the Bureau of Internal Revenue at telephone numbers (02) 922-3293, (02) 921-0430, or (02) 925-1789, or inquire at their office at BIR Building, Diliman, Quezon City.

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 or circumstances.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director III

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January 6, 2005

**ATTY. ANTONIO P. RELOVA**

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Laguna

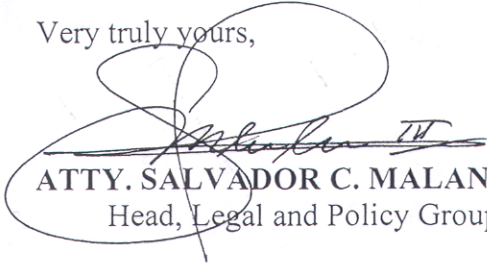
Dear Atty. Relova:

This refers to your letter dated 08 December 2004, which we received on 05 January 2005, addressed to the Honorable Secretary Emilia T. Boncodin in her capacity as Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on the following issues related to Republic Act 9184 and its Implementing Rules and Regulations Part A:

- a) delegation of the opening and examination of the eligibility documents to the Bids and Awards Committee (BAC) Secretariat;
- b) grant of honoraria to observers; and
- c) collection of compensation tax from BAC and Technical Working Groups members for honoraria received.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,

  
**ATTY. SALVADOR C. MALANA III**  
Head, Legal and Policy Group