

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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TSO NPM No. 008-2004

January 9, 2004

ATTY. ARNEL JOSE S. BAÑAS
Deputy Secretary for Administrative and
Financial Services
Senate of the Philippines
Pasay City

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

Dear Atty. Banas:

This refers to your letter dated November 3, 2003 which was referred to our office on November 4, 2003 for appropriate action, wherein you raised the following issues, to wit:

1. Whether or not the BAC can proceed with the awarding of requests that were received prior to the effectivity of the IRR of R.A. 9184;
2. Whether or not the BAC can proceed with the opening and awarding of bids even with only one bidder after the required postings and advertisements have been complied with;
3. Whether or not the BAC can open and subsequently award bids for branded items that have been specifically requested by the respective end-user/s and whose justification/s duly approved before the implementation of the IRR of R.A. 9184.

Applicability of the IRR of R.A. 9184

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

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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 abovementioned provision, the first issue may be resolved in the affirmative. The BAC of your agency may proceed with the awarding of the contract to the winning bidder in accordance with E.O. 40 and its IRR, provided that the advertisements or invitations for bids were issued after the effectivity of the Act but before the issuance of the IRR-A of R. A. 9184.

Only One Bidder Submitted a Bid

With regard to the second issue, the answer is still in the affirmative. The BAC may still proceed with the bid opening and awarding even if only one bidder submitted his bid pursuant to Section 36(a) of the IRR-A of R.A. 9184 as follows:

Section 36. Single Calculated/Rated and Responsive Bid Submission. A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR-A, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements;

Reference to Brand Names

Under, E.O. 40, reference to brand names is allowed, provided the procuring entity indicates after the brand name preferred the phrase "or its equivalent".

On the contrary, under R.A. 9184, reference to brand names is expressly prohibited which was provided in Section 18 thereof:

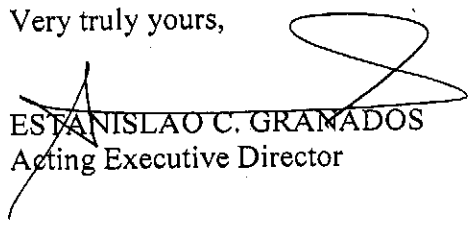
Section 18. *Reference to Brand Names.* Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. **Reference to brand names shall not be allowed.**

(Emphasis supplied)

In the case at hand, it was mentioned that the procurement referred to in the third question was undertaken after the effectivity of R.A. 9184 but prior to the issuance of its IRR. Thus, the applicable law is E.O. 40 and its IRR. In that respect, the bids for branded items specifically requested by the respective end-user/s may be opened and subsequently awarded thereto.

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.

Very truly yours,


ESTANISLAO C. GRAMADOS
Acting Executive Director