

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

NPM No. 100-2004

July 26, 2004

ATTY. ANESIO M. RANARIO
Provincial Administrator
Chairman, Bids and Awards Committee
Office of the Bid and Awards Committee
Province of Compostela Valley
Nabunturan, Compostela Valley

Re : Variation Orders in Light of Republic Act 9184 and its Implementing Rules and Regulations Part A

Dear Atty. Ranario:


This refers to your letter dated July 12, 2004, which we received through facsimile on even date requesting clarification on the following issue:

Whether or not the provisions of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") on Variation Orders apply to contracts awarded prior to its effectivity.

The issue is being raised in connection with the Construction of Phase I of the People's Cultural and Sports Arena Project of the Compostela Valley which was bid out on September 18, 2003 and awarded to the winning bidder on December 8, 2003.

Applicable Law for Implementation of Variation Orders

In light of the passage of R.A. 9184 and its IRR-A, all procurement laws, rules and regulations and such other law, presidential decree, or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of the said laws, are deemed repealed or amended accordingly.



However, it should be noted that the repeal or amendment of existing laws and regulations on procurement and government contracts by R.A. 9184 has no retroactive effect, in view of the transitory clause¹ of its IRR-A, to wit:

In all procurement activities where 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.

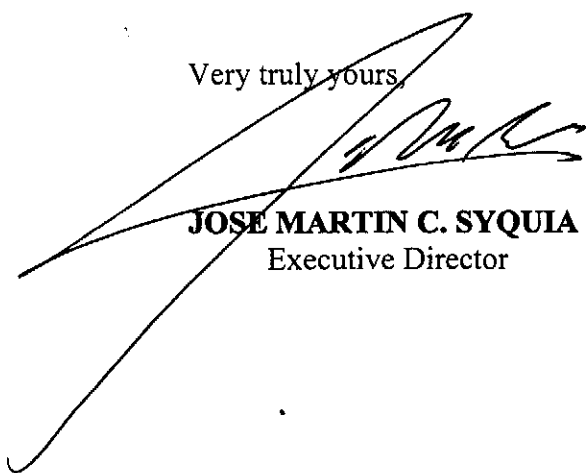
In view of the above-quoted provision, it is apparent that notwithstanding the passage of R.A. 9184 and its IRR-A prior procurement laws, rules and regulations still govern the procurement and implementation of certain government contracts, if the advertisement or invitation for bids were issued prior to the effectivity of R.A. 9184 or its IRR-A.

Accordingly, prior to the effectivity of R.A. 9184 and its IRR-A, the implementation of infrastructure projects were governed by Presidential Decree 1594 ("P.D. 1594") and its Implementing Rules and Regulations ("IRR"). As such, considering the facts and representations, we are of the opinion that your Province may apply the provisions of P.D. 1594 and its IRR for the implementation of variation orders necessary for the completion of the said project.

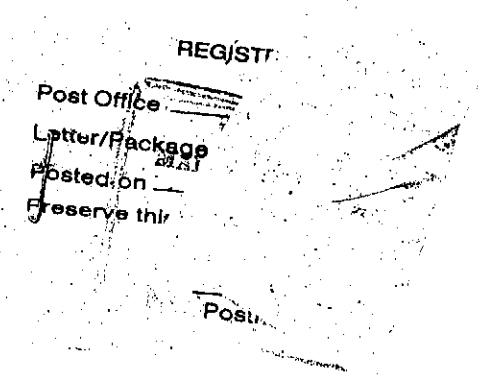
This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director



dlsn/npm/compostela/variation/07.04

¹ Section 77, IRR-A of R.A. 9184

Dennis
- letter

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July 12, 2004

ATTY. ANESIO M. RANARIO
Provincial Administrator
Chairman, Bids and Awards Committee
Province of Compostela Valley
Nabunturan, Compostela Valley

Dear Atty. Ranario:

This refers to your letter dated July 12, 2004, which we received through facsimile on even date, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on the applicable law for the implementation of variation order for the Phase I of the Construction of People's Cultural and Sports Arena project conducted on September 18, 2003 which is before the effectivity of Republic Act 9184 and its Implementing Rules and Regulations Part A.

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 Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. REYNALDO H. BICOL JR.
Procurement Management Officer V