

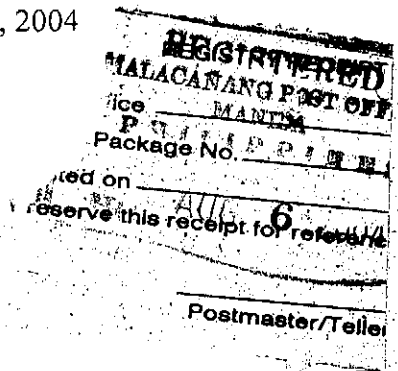
REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**  
*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
*Telefax Nos. (02) 735-4962; (02) 736-5758*

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**NPM No. 109-2004**

August 6, 2004

**ATTY. VIOLA P. VILLANUEVA**  
State Auditor V  
Regional Cluster Director  
Commission on Audit  
Regional Office VI  
Barangay Ungka, Pavia, Iloilo



**Re : Conduct of Bidding for the Procurement of Common-Use Supplies  
of the Municipality of Buenavista, Province of Guimaras**

Dear Atty. Villanueva:

This refers to your letter dated July 6, 2004, which we received through facsimile on July 27, 2004, requesting for clarification on the following issues, to wit:

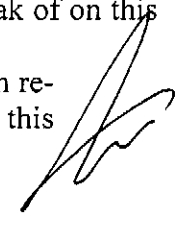
1. Whether or not there can be a failure of bidding even if the Bids and Awards Committee (BAC) had already recommended an award to the head of the procuring entity;
2. Whether or not the head of the procuring entity may disapprove the recommendation of the award of contract made by the BAC beyond the period prescribed in Section 37.2.1 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

These issues were raised in connection with the procurement of common-use supplies by the Municipality of Buenavista.

**Failure of Bidding**

Section 35.1 of the IRR-A, to be specific, is the relevant provision to speak of on this issue, to wit:

The BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21 of the Act and this



IRR-A, after a re-evaluation of the terms, conditions and specifications of the first bidding, when:

- a) No prospective bidder submits an LOI or no bids are received;
- b) All prospective bidders are declared ineligible;
- c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or
- d) The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR-A.

As can be gleaned from the aforequoted provision, the specific instances when the BAC may declare a failure of bidding are expressly provided and enumerated under the law. In addition to this; however, we refer to Section 41.1 of the IRR-A of R.A. 9184, which entitles the procuring entity to reserve its right to declare a failure of bidding, reject any and all bids, or not award the contract in the following situations:

- a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the procuring entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullify competition;
- b) If the BAC is found to have failed in following the prescribed bidding procedures; or**
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity; (ii) if the project is no longer necessary as determined by the head of the procuring entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

Although it is not clearly manifested in your letter that the BAC has failed in following the prescribed bidding procedures under R.A. 9184 and its IRR-A in the procurement of the aforesaid common-use supplies, we believe that it is worthy to mention the abovequoted provision as a legal justification for the refusal of the head of the procuring entity to award the contract or declare a failure of bidding in case any of the aforementioned instances occurs. As such, the Municipal Mayor of the Municipality of Buenavista may declare a failure of bidding if the BAC was, indeed, found to have failed in complying with the procurement rules and procedures provided under the law.

**Failure by the Head of the Procuring Entity to Approve/Disapprove the Recommendation of the Award by the BAC Beyond the Fifteen-(15) Day Period Prescribed in Section 37.2.1 of the IRR-A of R.A. 9184**

At this point, we would like to answer this issue in light of our discussion with regard to the first issue. Section 37:2.1 of the IRR-A of R.A. 9184 is quoted hereunder, to wit:

**Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the head of the procuring entity or his duly authorized representative shall immediately issue the Notice of Award** to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. In the case of GOCCs and GFIs, the period provided herein shall be thirty (30) calendar days. Within the same period provided herein, the BAC shall notify all losing bidders of its decision.  
(Emphasis and Underscoring supplied)

Although the aforesaid provision mandates the head of the procuring entity or his duly authorized representative *to issue the Notice of Award* to the winning bidder as recommended by the BAC, which gives the impression that the head of the procuring entity should act on the recommendation by the BAC within the said fifteen (15)-day period whether it be an approval or disapproval, we believe that such period does not limit or restrict the procuring entity to exercise its right under the aforementioned Section 41.1 of the IRR-A of R.A. 9184.

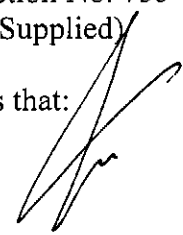
As such, we are of the opinion that the procuring entity, through its head, may avail of its right to reject any and all bids, declare a failure of bidding, or not award the contract to the winning bidder when justified by the circumstances mentioned in the aforesaid Section 41.1 of the IRR-A of R.A. 9184, even beyond the 15-day period mentioned in Section 37.2.1 of the same IRR-A.

**Procurement of Common-Use Goods and Supplies from the Procurement Service (PS) of the Department of Budget and Management (DBM)**

Considering that the above-cited issues were raised in connection with the *procurement of common-use supplies* by the Municipality of Buenavista, it may be worthy to note that procurement of such goods falls under Alternative Methods of Procurement, specifically Negotiated Procurement under Section 53 (e) of the IRR-A of R.A. 9184, which provides that:

**“Purchases of goods from another agency of the Government, such as the PS-DBM, which is tasked with a centralized procurement of commonly used Goods for the government** in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989. x x x” (Emphasis Supplied)

In this connection, Section 54.2 (g) of the IRR-A, further requires that:

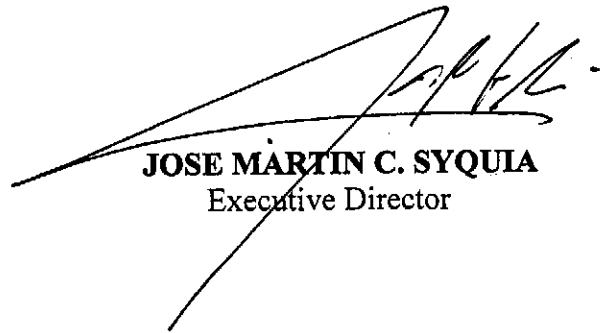


With respect to item (e) of Section 53 of the Act and this IRR-A, a direct negotiation may be made with the Government agency concerned: **Provided, however, That the procurement of common-use goods and supplies shall be undertaken through the PS-DBM.** (Emphasis Supplied)

Hence, it is our advise that in the event that the Municipality of Buenavista has taken all the necessary steps to validly declare a failure of bidding for the subject procurement, all succeeding procurement of common-use goods and supplies should be in accordance with the aforementioned provisions.

With the foregoing elucidations, we trust that our opinion has provided the Municipality of Buenavista the needed information in its procurement of common-use goods and supplies. Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director

Copy furnished:

**ENGR. NILDA A. SILAYA**  
Chairperson, BAC  
Municipality of Buenavista

Gse/gppb-tso

REPUBLIC OF THE PHILIPPINES  
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July 27, 2004

**ATTY. VIOLA P. VILLANUEVA**  
State Auditor V  
Regional Cluster Director  
Commission on Audit  
Regional Office VI  
Barangay Ungka, Pavia, Iloilo

Dear Director Villanueva:

This refers to your letter dated July 6, 2004, which we received through facsimile on July 27, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on 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