



TECHNICAL SUPPORT OFFICE

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NPM No. 11-2006

April 11, 2006

MS. SUSANA K. MADARIETA, MD, MPH
Director IV
Department of Health – Regional Field Office VII
Osmena Blvd., Cebu City

**Re: Validity of Contract Extensions/Renewals vis-à-vis
Republic Act 9184 (R.A. 9184) and its Implementing
Rules and Regulations Part A (IRR-A)**

Dear Director Madarieta:

This pertains to your letter dated 20 March 2006, requesting clarifications on the provisions of Republic Act 9184 (R.A. 9184), also known as the Government Procurement Reform Act and its Implementing Rules and Regulations Part A (IRR-A) relative to the procurement of janitorial, security and catering services of the Regional Filed Office VII of the Department of Health (DOH).

Your office has taken the position that there is no provision in R.A. 9184 and its IRR-A which mandates the conduct of an annual bidding for the aforementioned contracts nor is there a provision which prohibits the extension/renewal thereof.

As contained in your letter, your office has continuously been extending/renewing contracts which were awarded and bid out in 2003 (for janitorial and security services) and in 2002 (for catering services) respectively. You further aver that such extension/renewal proves to be more advantageous to the government, considering that no cost for the preparation of the advertisements and no valuable executive time are expended for this purpose.

Clarification is hereby sought on the following issues:

Whether or not a government agency is mandated to conduct an annual public bidding for the aforementioned general support services; and

Whether or not contract renewals/extensions are valid in light of R.A. 9184 and its IRR-A?

Concept of Annual Procurement Plan

The law is categorical in its mandate and definitive in its policy.

A perusal of the provisions of R.A. 9184 and its IRR-A would lead us to infer that what the law clearly intends is to have a totally new and separate procurement contract for general support services for each year to be reflected in the agency's Annual Procurement Plan (APP) and thereafter consistent with its duly approved yearly budget¹.

We clearly do not agree with the supposition that there is no prohibition in the annual extension/renewal of procurement contracts under R.A. 9194 and its IRR-A. At this juncture it would be good to emphasize that it is a settled rule under statutory construction that the legislative intent must be ascertained from a consideration of the statute as a whole. The particular words, clauses and phrases should not be studied as detached and isolated expressions but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.² Clearly, the absence of a categorical provision which explicitly states the prohibition of a contract extension/renewal under R.A. 9184 evidently does not mean that contract extension is allowed at all times.

Moreover, a perusal of the provisions of the General Appropriation Act, FY 2005³ would lead us to infer that contracts entered into by government agencies are generally for a duration only of one (1) year, otherwise, the Multi Year Obligational Authority would not have been specifically considered to be included therein for purposes of multi year contracts, which proves to be an exemption to the general rule calling for an annual bidding for these type of procurement contracts.

Purpose of Competitive Bidding

Section 10 of the IRR-A of R.A. 9184 proves helpful in our present discourse, to wit:

All procurement shall be done through competitive bidding, except as provided in Rule XVI of this IRR-A.

Consequently, the alternative methods of procurement do not, in any way, provide for a method calling for an automatic extension/renewal of government contracts. In fact, Repeat Order as contained in your letter cannot be applied for the

¹ Section 7.1 of the IRR-A of R.A. 9184

² Araneta vs. Concepcion, 99 Phil. 709

³ Section 23, General Provisions provides:

In the implementation of multi-year projects, no agency shall enter into a multi-year contract without a Multi-year Obligational Authority issued by the DBM for the purpose. Notwithstanding the issuance of the Multi-Year Obligational Authority, the obligation to be incurred in any given calendar year, shall in no case exceed the amount programmed for implementation during said calendar year.

acquisition of general support services considering that the requirements under this provision entail the replenishment of tangible goods.

To permit government agencies to have an annual renewal/extension of their existing contracts would be violative of the very prescriptions of the new procurement law.

Please take note that competitive public bidding, which is the very foundation of R.A. 9184, aims to protect the public interest by giving the public the best possible advantages thru open competition. It also aims to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts and consequently obtain the best possible deal for the government by fostering transparency and preventing favoritism, collusion and fraud in the award of contracts.

Also, the required bidding is aimed at affording all the participating bidders equal opportunities in securing awards of contracts. The idea is to place them on equal footing whereby the rules and regulations on bidding are applied to all of them indiscriminately, so that they compete among themselves under the same set of rules. More specifically, any and all requirements imposed thereunder apply equally to all bidders without exception.

This office is of the view that, unless and until your agency bid out these contracts, the determination of whether or not the present service providers do provide the most advantageous contracts for the government will, to our mind, remain doubtful.

Extension of Contracts for General Services

At this juncture, please be informed that the Government Procurement Policy Board (GPPB) has already issued GPPB Resolution No. 08-2005, as amended by GPPB Resolution No. 03-2006, providing for the specific rules and procedures to govern particular situations where contract extensions may be allowed for the purpose of averting any interruption in government service. The full text of this resolution may be viewed and downloaded at our website www.gppb.gov.ph.

With the foregoing elucidations, we trust that the Regional Field Office VII of the Department of Health (DOH) would be more cautious in their procurement undertakings.

We trust that this clarifies matters.

Very truly yours,


ESTANISLAO C. GRANADOS JR.
Executive Director IV