

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. 111-2004

August 10, 2004

MR. ARMANDO A. SURATOS
Deputy Governor
Bangko Sentral ng Pilipinas (BSP)
Manila

**Re : Queries on Republic Act No. 9184 ("R.A. 9184") and its
Implementing Rules and Regulations Part A ("IRR-A")**

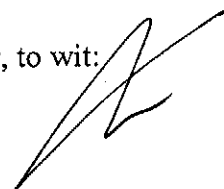
Dear Deputy Gov. Suratos:

This refers to your letter dated August 2, 2004, which we received on August 3, 2004, requesting for clarification on the following issues:

1. Whether or not the Director of the Administrative Services Department (ASD) of BSP can approve the recommendation of the award of contract made by the procuring unit of the BSP, which is the ASD, and/or issue the Notice of Award to the winning bidder in procurement of goods undertaken through Shopping;
2. Whether in renewal of contract for consulting services of individual consultants, whose contracts are on a six (6)- month basis, it is sufficient for the end-user unit to submit the said renewal of contract to the head of the procuring entity for approval or it is necessary that another bidding process be undertaken by the Bids and Awards Committee (BAC) for such procurement of consulting services.

Authority to Award the Contract In Procurement of Goods Undertaken through Shopping

Section 37.2.1 of the IRR-A 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 approve or disapprove the said recommendation.** In case of approval, **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. x x x” (Emphasis and Underscoring supplied)

In this connection, we further quote the definition of the *head of the procuring entity* as provided under Section 5 (m) of the IRR-A of R.A. 9184, which states that:

“Head of the Procuring Entity. Refers to: (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and branches of government; (ii) **the governing board or its duly authorized official, for GOCCs, GFIs and SUCs;** or (iii) the local chief executive, for LGUs: x x x”

Considering that the BSP is a government financing institution (GFI), it is clear from the foregoing rules that the aforementioned tasks of approving the recommendation of award of the contract and issuing the corresponding Notice of Award are lodged with the governing board of the BSP or its duly authorized official, who may be its Chairman. As such, we believe that as long as the Director of the ASD is authorized by the governing board of the BSP to perform the aforesaid tasks and functions, the former can validly act and assume such powers in behalf of the latter for procurement of goods undertaken through Shopping by the BSP.

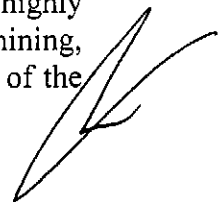
Renewal of Contracts for Consulting Services

With regard to the second issue, worthy to note for discussion is the distinction between a contract for consulting services which was procured through Competitive Bidding and one which was procured through Negotiated Procurement, specifically under Section 53 of the IRR-A of R.A. 9184, the relevant portion of which is quoted hereunder as follows:

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x x

f) In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the



consultant: *Provided, however, That the term of individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing head of the procuring entity*, but in no case shall exceed the term of the latter. (Emphasis and Underscoring supplied)

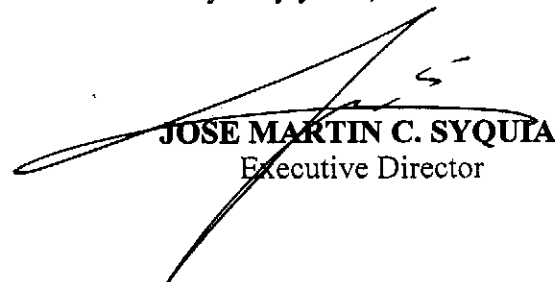
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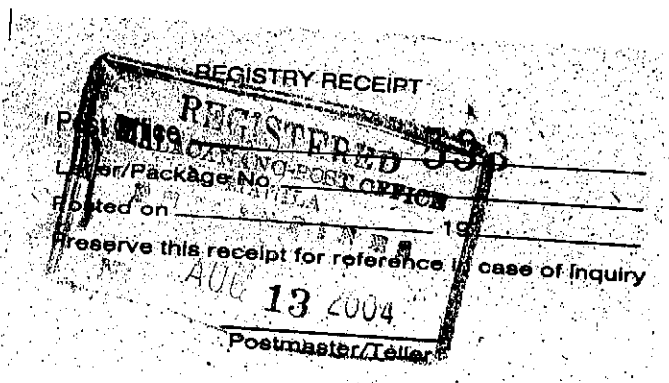
In view of the aforesaid provision, we believe that if the contract of consulting services that has to be renewed was procured through Competitive Bidding, the BAC should conduct another bidding process for the procurement of such consulting services; considering that as a general rule, the procuring entities shall adopt public bidding as the general mode of procurement, whereas alternative methods of procurement shall be resorted to only in highly exceptional cases provided under R.A. 9184 and its IRR-A.

On the other hand, for consultancy contracts of individual consultants whose services were previously hired on the basis of Negotiated Procurement under Section 53 (f) of the IRR-A of R.A. 9184, the contract may be renewed upon the expiration of its term. In such case, we are of the opinion that it is sufficient for the end-user unit to submit the renewal of contract of the individual consultant to the head of the procuring entity for approval.

With the foregoing elucidations, we trust that your issues have been clarified. 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



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