

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. 116-2004

August 18, 2004

MS. LOURDES B. ORDONA

Municipal Accountant
Office of the Municipal Accountant
Municipality of Boljoon
Province of Cebu

**Re : Deferment of the Implementation of R.A. 9184 and its IRR-A,
Composition of BAC for Barangays and Implementation of Projects "By
Administration"**

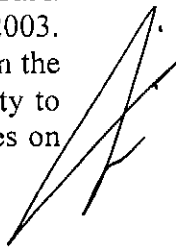
Dear Ms. Boljoon:

This refers to your letter dated July 26, 2004, which we received on August 16, 2004, requesting clarification on several issues pertaining to the implementation of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A"). We have determined the following substantive issues:

1. Whether or not the implementation of R.A. 9184 and its IRR-A may be deferred;
2. Whether or not Barangays may procure following the provisions of Republic Act 7160 ("R.A. 7160"); and
3. Whether or not implementation of projects "by administration" is allowed under R.A. 9184 and its IRR-A.

Deferment of the Implementation of R.A. 9184 and its IRR-A

We wish to inform you that the Government Procurement Policy Board ("GPPB"), under Policy Matter 004-2004 dated March 25, 2004, was of the opinion that the implementation of R.A. 9184 and its IRR-A is absolute and mandatory after its effectivity on October 8, 2003. Furthermore, it was mentioned therein that the GPPB has no authority to grant exemptions from the implementation of R.A. 9184 and its IRR-A as it is "bereft of a legislative delegated authority to determine within its discretion or 'to ascertain, under and pursuant to law, some circumstances on



which the law by its own terms, makes its own action depend, or to find the facts or conditions properly prescribed under which a law as passed will or will not operate, that is, for putting in effect, applying or suspending a law.¹” A copy of the afore-mentioned GPPB opinion is attached hereto as Annex “A” for your immediate perusal.

As such, deferment of the implementation of the provisions of R.A. 9184 and its IRR-A as requested by your municipality through its Resolution No. 42-'04 cannot be granted preferable action.

Procurement by Barangays; BAC Composition

Based on the mandatory application of R.A. 9184 and its IRR-A as discussed above, procurement activities of Barangays should follow the rules and regulations provided therein regardless of their inability to constitute their own Bids and Awards Committee (“BAC”). Although R.A. 9184 and its IRR-A did not expressly provide for the specific composition of the BAC for barangays, it nevertheless did not fail to recognize the existence and importance of the smallest unit of the local government. As part of the Local Government Unit (“LGU”), Barangays are to be guided by Section 11.2.2 of the IRR-A of R.A. 9184 in constituting the members of its BAC, to wit:

The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices. The end user office shall always be represented in the BAC. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The member of the BAC shall be personnel occupying plantilla positions of the procuring entity concerned.

The local chief executive shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and Vice-Chairman.

Moreover, in view of numerous requests from Barangays regarding their inability to constitute a BAC in compliance with the above-quoted provision, the GPPB clarified the composition of BAC for Barangays through GPPB Resolution No. 01-2004, dated March 10, 2004, a copy of which is attached hereto as Annex “B”. In this regard, concerns such as the one being raised by your office, will now be addressed since Barangays can now constitute their own BAC and not resort to outsourcing of its procurement through their respective municipalities, cities or provinces.

As a final note on this issue, we reiterate that procurement by Barangays cannot be made using the provisions of R.A. 7160 inasmuch as Title Six Book Two of R.A. 7160 which includes Section 364 was repealed by R.A. 9184 as clarified under Section 75 of its IRR-A. Having been effectively repealed by R.A. 9184 and its IRR-A, Section 364 of R.A. 7160 cannot be used as a legal basis for the constitution of BACs for Barangay level.

¹ Cruz, *Philippine Administrative Law*, 1998 Ed. pp. 33-34 citing 73 CJS *Public Administrative Bodies*, Sec.37.

Implementation of Projects "By Administration"

In our previous non-policy opinions, specifically NPM No. 064-2004 and 073-2004, dated May 6 and 24, 2004, respectively, we opined that although implementation of projects "by administration" is still allowed under R.A. 9184 and its IRR-A, the same is subject to the presence of the situations specified in Section 53(b) therein. We quote hereunder the pertinent portion of NPMs 064-2004 and 073-2004, to wit:

The IRR-A of R.A. 9184 provides that procuring entities have the option to undertake projects "by administration" in the cases mentioned in Section 53(b) thereof, to wit:

In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high risk areas, through the AFP; (Emphasis supplied)

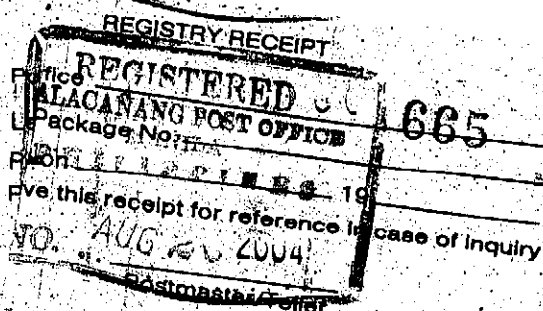
It appears from the above-quoted provision that procuring entities may opt to undertake projects "by administration" only in the cases specified therein. These are as follows: (a) imminent danger to life or property during a state of calamity; (b) time is of the essence arising from natural or man-made calamities; (c) other causes where immediate action is necessary to prevent damage to or loss of life or property; or (d) to restore vital public services.

Applying the principle of *expressio unius est exclusio alterius* (express mention is implied exclusion) which means that the express mention of one thing, will as a general rule, exclude others not mentioned, procuring entities cannot undertake a project "by administration" other than in the cases specifically mentioned in Section 53(b) of the IRR-A of R.A. 9184.

We trust that this clarifies matters.

Very truly yours,


JOSE MARTIN C. SYQUIA
Executive Director III



Annex "A"

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD

Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

PM No. 04-2004

March 25, 2004

Hon. RAMON N. GUICO

National President

League of Municipalities of the Philippines

2nd Floor, LMP Building, 265 Ermin Garcia St.,

Cubao, Quezon City

Re : Request for Deferment of the Implementation of Republic Act No. 9184 and its Implementing Rules and Regulations Part A by the LMP on Municipalities.

Dear Mayor Guico :

This refers to your letters dated January 29, 2004 and March 4, 2004, which we received on February 6, 2004 and March 5, 2004 respectively, requesting that the creation of the Bids and Awards Committee ("BAC") for municipalities under Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") be deferred so as not to derail the implementation of critical projects in the municipal level.

Through those letters, you informed us that the National Directorate of the League of Municipalities of the Philippines ("LMP") is unanimous in its position to recommend the deferment of the law on this aspect, and endorsed the letters of Mayors Jose U. Alberto Jr. and Lourdes I. Idanan of the Municipalities of Virac and Caramoran, Catanduanes, which also requested that their respective municipalities be exempted from the coverage of R.A. 9184 so that they can undertake the immediate execution of their vital infrastructure projects. Pursuant to these concerns, the LMP is recommending that a Circular be issued to this effect.

Powers of the Government Procurement Policy Board under R.A. 9184

By virtue of R.A. 9184, which took effect on January 26, 2003, the Government Procurement Policy Board ("GPPB") absorbed all the powers, functions and responsibilities of the Procurement Policy Board created under Executive Order No. 359, series of 1989, and all affected functions of the Infrastructure Committee of the National Economic Development Authority. Thus, a new government body is now institutionalized and conferred with clear

and sufficient powers, functions and responsibilities to effectuate broad procurement reforms in Government. Section 63 of R.A. 9184 identifies the GPPB's functions, to wit:

SEC. 63. *Organization and Functions.* - A Government Procurement Policy Board (GPPB) is hereby established to: (a) protect national interest in all matters affecting public Procurement, having due regard to the country's regional and international obligations; (b) formulate and amend, whenever necessary, the IRR and the corresponding standard forms for Procurement; (c) ensure that Procuring Entities regularly conduct Procurement training programs and prepare a Procurement operations manual for all offices and agencies of government; and (d) conduct an annual review of the effectiveness of this Act and recommend any amendments thereto, as may be necessary.

Based on the foregoing and as amplified by Section 63.1 of the IRR-A of R.A. 9184, the GPPB is the sole administrative authority imbued with quasi-legislative and incidental powers to determine policy directions in the area of public procurement through the formulation of procurement rules, regulations and guidelines. It is also the government body charged with the authority to ensure the proper implementation of procuring entities of R.A. 9184, its IRR-A and all other rules and regulations pertaining to public procurement, monitor the effectiveness of procurement reforms and compliance thereto by Government agencies, and undertake the professionalization of procurement practitioners in Government.

Effectivity of the Provisions of R.A. 9184 and its IRR-A Not Determined by Contingencies

Although the GPPB acts as an agent of the legislature insofar as it is authorized to promulgate rules and regulations in the exercise of its quasi-legislative functions or rule-making power, as sanctioned by Section 63 of R.A. 9184, such authority is limited only to *supplementary or detailed*¹ and *interpretative legislations*.² R.A. 9184 did not grant the GPPB the quasi-legislative authority of *contingent legislation* or the power to determine some facts or state of things upon which the enforcement of law depends. In other words, the GPPB is bereft of a legislative delegated authority to determine within its discretion or "to ascertain, under and pursuant to law, some circumstances on which the law by its own terms, makes its own action depend, or to find the facts or conditions properly prescribed under which a law as passed will or will not operate, that is, for putting in effect, applying or suspending a law."³

Furthermore, Congress did not provide that R.A. 9184 and its IRR-A shall take effect or be suspended upon the happening of future specified contingencies, acts or conditions, nor does it allow other administrative agencies to ascertain the existence thereof as the basis of

¹ Supplementary or detailed legislation pertains to rules promulgated by an administrative body which is intended to fill in the details of the law and "to make explicit what is only general." Its purpose is to enlarge upon a statute, subject only to the standards fixed therein, to ensure its effective enforcement in accordance with the legislative will. (See Cruz, *Philippine Administrative Law*, 1998 Ed., p. 33)

² Interpretative legislation is also known as rule-making by the construction and interpretation of a statute being administered and is intended to interpret a particular law being enforced. (See De Leon and De Leon, Jr., *Administrative Law: Text and Cases*, 2001 Ed., p. 81) .

³ Cruz, *Philippine Administrative Law*, 1998 Ed. pp. 33-34 citing 73 *CJS Public Administrative Bodies*, Sec.31.

taking into effect or suspending the law. As a matter of fact, R.A. 9184 provides for its own effectivity. Thus, pursuant to Section 78, the law took effect fifteen (15) days following its publication in two (2) newspapers of general circulation, namely, Manila Times and Malaya, or specifically on January 26, 2003. Upon its effectivity, and after the law was put into operation by its IRR-A on October 8, 2003, all government agencies, including local government units, are now governed by a general, uniform and standard procurement law, rules and regulations. The inevitable legal consequence of which is its enforcement and implementation without exceptions. Consequently, no valid justification can be made to defer its application.

Based on the foregoing, we regret to inform you that the GPPB cannot issue a Circular which has the effect of deferring the implementation of any of the provisions of R.A. 9184 and its IRR-A. While we understand the difficulties that the municipalities are presently experiencing in adjusting to the reforms institutionalized by our new procurement law, which would sometimes derail their respective projects, we cannot act beyond the statutory limits of our conferred authority just to accommodate convenience and practicality. The GPPB as an agent of the legislature is limited to the jurisdiction and powers expressly granted to it or necessarily implied from the provisions of R.A. 9184, which created such body.⁴ It must strictly perform its legal mandate through sound policy formulation within the limits of its delegated quasi-legislative authority, and enforce the mandatory provision of R.A. 9184 and its IRR-A. Thus, its administrative issuances must not override but must remain consistent and in harmony with the law it seeks to implement.

Moreover, it must not be forgotten that though the changes being introduced by R.A. 9184 and its IRR-A in the procurement process would sometimes affect and delay the present projects being undertaken by procuring entities due to the complexity and technical nature, as well as the magnitude of the reforms in the procurement rules and procedures being introduced by law, such sacrifices must be made in view of a greater benefit; that of transforming our dysfunctional public procurement system into one that promotes transparency, competitiveness, economy, efficiency and accountability.

At this point, we would like to inform you that the GPPB through its Technical Support Office ("GPPB-TSO") is now exerting all efforts to widely disseminate information and educate the procurement officials on R.A. 9184 and its IRR-A for its effective implementation. Just recently, the GPPB-TSO in cooperation with the Local Government Academy has trained its pool of trainers who will be in charge of nationwide trainings for Local Government Units (LGUs). Thus, municipal procurement officials are highly advised and encouraged to participate in the local trainings to be conducted by such trainers for procurement proficiency.

Lastly, to efficiently assist the government agencies and LGUs, the GPPB-TSO "Help Desk" was purposely created to be of assistance in the resolution of issues and concerns encountered relative to the implementation of R.A. 9184 and its IRR-A. In this light, LGUs can always correspond with and address their queries to the GPPB-TSO "Help Desk" for proper guidance, in the event problems are encountered in the application of our new procurement law, rules and regulations.

⁴ RCPI v. NTC, 215 SCRA 455.

The GPPB-TSO may be reached at Mezzanine 125, Mabini Hall, Malacañang, Manila; Telephone Nos. (02) 735-4962; (02) 736-5758.

We trust that this clarifies matters.

Very truly yours,



EMILIA T. BONCODIN
Chairperson, GPPB

GOVERNMENT PROCUREMENT POLICY BOARD
RESOLUTION NO. 01-2004

WHEREAS, Republic Act No. 9184 ("R.A. 9184"), entitled "An Act Providing for Modernization, Standardization and Regulation of the Procurement Activities of the Government for other Purposes," was signed into law on January 10, 2003, and took effect on January 26, 2003. On the other hand, its Implementing Rules and Regulations Part A ("IRR-A") took effect on October 8, 2003;

WHEREAS, Section 4 of R.A. 9184 provides that it shall apply to the procurement of infrastructure projects, goods and consulting services, regardless of source of funds, whether local or foreign by all branches and instrumentalities of Government, its departments, offices and agencies, including government-owned and/or controlled corporations and local government units;

WHEREAS, Section 76 of R.A. 9184 amends Title Six, Book Two (Property and Supply Management in Local Government Units) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," and Section 76 provides that any other law, presidential decree or issuances, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with provisions of R.A. 9184 is repealed, modified or amended accordingly;

WHEREAS, Section 75 of IRR-A further amends Chapter Five, Title One, Book One of R.A. 7160, which refers to the Local Prequalification, Bids and Awards Committee;

WHEREAS, crucial to the implementation of R.A. 9184 and its IRR-A in the local government level is the creation of the Bids and Awards Committee ("BAC") in all local government units ("LGUs") including the barangays;

WHEREAS, on December 11, 2003, the Government Procurement Policy Board ("GPPB") tasked the Government Procurement Policy Board-Technical Support Office ("GPPB-TSO") and the Department of Interior and Local Government ("DILG") to study and make a proposal on the possible composition of the BAC at the barangay level including the determination of the ranking of officials who may be designated as Chairman of the BAC in other LGUs;

WHEREAS, in compliance with the instructions of the GPPB, the DILG submitted a draft proposal as to the composition of the BAC on January 29, 2004, and the members of the GPPB unanimously agreed to adopt, with certain amendments, the BAC composition in LGUs including the barangays, as proposed by GPPB-TSO and DILG;

WHEREAS, for the effective dissemination of the BAC composition at the local government level, including the barangays, the DILG is hereby directed to issue a memorandum circular reflecting the BAC composition contained herein for LGUs' compliance.

NOW, THEREFORE, for and in consideration of the foregoing, WE, the Members of the Government Procurement Policy Board, by virtue of the powers vested in US by law, hereby RESOLVE to adopt and confirm, as WE hereby adopt and confirm the following BAC composition in LGUs, including the barangays, to wit:

1. Provinces, Cities and Municipalities:

- 1.1 The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices. The end user office shall always be represented in the BAC. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned.

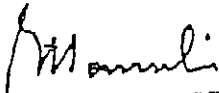
The local chief executive shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and Vice-Chairman.

- 1.2 The members to be designated by the local chief executive to the BAC shall be at least five (5), but not more than seven (7).
- 1.3 In no case shall the local chief executive and/or the approving authority be the Chairman or a member of the BAC.
- 1.4 For purposes of determining the rank, the first ranking permanent official shall be the governor, in the case of provinces, and the mayor, in the case of cities and municipalities; the second ranking permanent official shall be the vice governor, in the case of provinces, and the vice mayor, in the case of cities and municipalities; and, the third ranking permanent official shall be the head of any of the regular offices under the Office of the Local Chief Executive: *Provided, however,* That the vice governor or the vice mayor shall not be designated as member of the BAC as its office is not one of the regular offices under the Office of the Local Chief Executive.

2. Barangays:

- 2.1 The BAC shall be composed of at least five (5), but not more than seven (7) regular members of the Sangguniang Barangay, except the Punong Barangay.
- 2.2 The Punong Barangay, being the local chief executive, shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and Vice-Chairman.
- 2.3 In no case shall the local chief executive and/or the approving authority be the Chairman or a member of the BAC.

APPROVED this 10th day of March, 2004 at Pasig City, Philippines.




HON. EMILIA T. BONCODIN
Secretary
Department of Budget and
Management


HON. ROMULO L. NERI
Director General
National Economic and Development
Authority

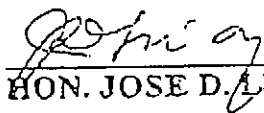


HON. EDILBERTO C. DE JESUS
Secretary
Department of Education

HON. VICENTE S. PEREZ, JR.
Secretary
Department of Energy



HON. JUANITA D. AMATONG
Acting Secretary
Department of Finance


HON. MANUEL M. DAYRIT
Secretary
Department of Health




HON. JOSE D. LINA, JR.
Secretary
Department of Interior and Local
Government

HON. EDUARDO R. ERMITA
Secretary
Department of National Defense

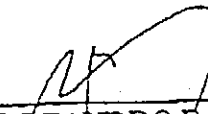


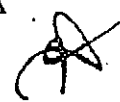
HON. FLORANTE M. SORIQUEZ
 Secretary
 Department of Public Works and
 Highways

HON. ESTRELLA F. ALABASTRO
 Secretary
 Department of Science and Technology



HON. CESAR V. PURISIMA
 Secretary
 Department of Trade and Industry



HON. LEANDRO R. MENDOZA
 Secretary
 Department of Transportation and
 Communication 



HON. FIORELLO R. ESTUAR
 Private Sector Representative

REPUBLIC OF THE PHILIPPINES
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August 16, 2004

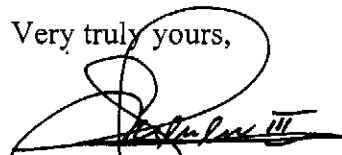
MS. LOURDES B. ORDOÑA
Municipal Accountant
Office of the Municipal Accountant
Municipality of Boljoon
Province of Cebu

Dear Ms. Ordoña:

This refers to your letter dated July 26, 2004, which we received on August 16, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically the composition of the Bids and Awards Committee for Barangays.

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 GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,



ATTY. SALVADOR C. MALANA III
Procurement Management Officer V