

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44

NPM No. 132-2004

October 12, 2004

HON. AMADO B. NOBLE, SR.
Mayor
Municipal Government
Talakag, Bukidnon

Re : Request for exemption from Section 10, Rule IV and Section 47, Rule XV of the Implementing Rules and Regulations Part A of R.A. 9184

Dear Mayor Noble:

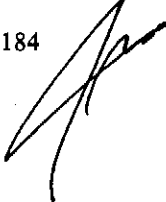
This has reference to your letter, dated 26 August 2004, addressed to the Chairperson of the Government Procurement Policy Board¹, requesting exemption of your office's purchases of fuel and lubricants from the application of certain provisions of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). The provisions adverted to are embodied in Section 10, Rule IV and Section 47, Rule XV of the IRR-A.

Per your representation, being the proprietor of the lone gasoline station in your municipality, you are apprehensive of the municipal government's inability to comply with some of the legal and procedural requirements of R.A. 9184 and its IRR-A anent your contemplated purchases. Particularly, the foregoing being the case, the requirement that "all bids are to be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree²" can hardly be complied with. Instead, you suggest resort by the Municipal Government of Talakag to the alternative methods of procurement pursuant to Rule XVI of the IRR-A.

Hence, the focal issue for resolution is as follows:

¹ The Hon. Secretary Emilia T. Boncodin of the Department of Budget and Management sits as Chairperson of the Government Procurement Policy Board.

² Section 47, Rule XV, Implementing Rules and Regulations Part A of R.A. 9184



Whether or not the Municipality of Talakag may resort to alternative methods of procurement by reason of the impracticability of the requirement of Section 47, Rule XV of the IRR-A.

Anchored on this main issue is the following sub-issue:

Whether or not the GPPB may grant exemption from the application of some provisions of R.A. 9184.

The issues aforementioned shall be discussed jointly as follows:

GPPB may not grant exemptions

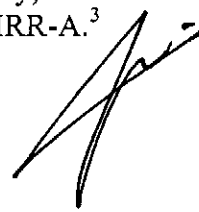
At the outset, it will be well to point out that the GPPB, being a creation of R.A. 9184 can not exercise functions not granted to it by said law. Its mandate is to effectuate the purpose and intent of the Government Procurement Reform Act; thus, its operations are confined by the law and only within the scheme of implementing its provisions according to the legislative policy. Hence, requests for exemption are beyond its power to grant. It can not arrogate unto itself the power to grant exemptions in as much as it does not have the power to legislate nor determine the coverage of the law. At most, it may only render contemporaneous construction of the provisions of the law pursuant to its quasi-legislative fiat, and issue rules and regulations pursuant to its rule-making power.

Competitive Bidding: The general rule

The policy of the State in the spectrum of public procurement is explicit in R.A. 9184. Thus, it is declared therein that the State shall promote the ideals of good governance in all its branches, departments, agencies, subdivisions, and instrumentalities, including government-owned and/or controlled corporations and local government units. This same policy is amplified in the IRR-A of R.A. 9184. Section 1, Rule thereof provides, to wit:

The provisions of this IRR-A are in line with the Government's commitment to good governance and its efforts to adhere to the principle of transparency, accountability, equity, efficiency, and economy in its procurement process. It is the policy of the Government that procurement of infrastructure projects, goods and consulting services shall be competitive and transparent, and therefore shall be through public bidding, except as otherwise provided in this IRR-A. It is also the policy of the Government to adopt a standard and uniform set of rules and regulations governing the procurement of infrastructure projects, goods and consulting services for government projects and other related activities that embodies a streamlined procurement process.

Hence, it can be gainsaid that under our jurisdiction, public bidding is the rule, and the use of any of the alternative methods is the exception. Consequently, alternative methods shall be resorted to only in highly exceptional cases as provided for in the IRR-A.³



³ Section 48.2, Implementing Rules and Regulations Part A or R.A. 9184

Alternative Methods of Procurement; only in highly exceptional cases

The import of Section 48 of the IRR-A is that, the procuring entity may resort to any of the alternative methods of procurement as prescribed under RA 9184 and its IRR-A, only whenever justified by exceptional conditions and if it is to promote economy and efficiency. Pointedly, the conditions referred to are limited to those which are explicitly provided in the law. Any condition, however exceptional, not included nor contemplated therein, is deemed to have not been considered by the law to warrant the use of the alternative methods of procurement.

Cursory reading of the RA 9184 and its IRR-A would yield an obvious resolution that the circumstances for which alternative methods of procurement is sought by the Municipality of Talakag is not among those contemplated by the law. Hence, appropriately, yielding to the prescription of Section 48.2 of the IRR-A, the municipal government should adopt public bidding as the mode of procurement.

Sworn Affidavit of relations: mandatory requirement

And finally, the foregoing being the case, compliance with the procedural requirements for competitive bidding is mandatory. Thus, all bids are to be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. Failure to comply with the said requirement shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of the IRR-A.

Here, the intention of the law in requiring the disclosure of relations is the ultimate objective of avoiding the interweaving and conflict of interests between the head of the procuring entity and the prospective bidder. The policy behind the law is aimed at protecting public interest and may not be diminished by the incidental inconvenience that may be caused to few private interests.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

Cc: **MR. ROMEO T. MELAD**
OIC-Regional Director
Department of Budget and Management
Regional Office X

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September 29, 2004

HON. AMADO B. NOBLE, SR
Municipal Mayor
Office of the Municipal Mayor
Municipality of Talakag
Province of Bukidnon

Dear Mayor Noble:

This refers to your letter dated August 26, 2004, which we received on September 29, 2004 through Mr. Romeo T. Melad, Officer-in-Charge of the Regional Office X – Department of Budget and Management, requesting authority from the Government Procurement Policy Board (GPPB) that the procurement of lubricants and gasoline products of your municipality be done using alternative methods of procurement instead of public bidding under 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 GPPB for appropriate resolution should referral thereto becomes necessary.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

Copy furnished:

MR. ROMEO T. MELAD
OIC – Regional Director
Department of Budget and Management
Regional Office X