

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 014-2004

February 18, 2004

ATTY. CHITO M. CRUZ
Senior Deputy Administrator
for Support Services
Subic Bay Metropolitan Authority

Re : Request for Exemption from the Limitations under Sections 52(b) and 42.5 of IRR-A of R.A. 9184

Dear Atty. Cruz:

This refers to your letter dated February 3, 2003, requesting for exemption from the limitations provided under Sections 52(b) and 42.5 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184") on the maximum allowable amount for shopping and the issuance of letters of credit, respectively. The issues arising from said request are as follows:

1. *Whether or not the Government Procurement Policy Board ("GPPB") has the authority to exempt the Subic Bay Metropolitan Authority ("SBMA") and allow it to procure through the alternative method of shopping at an increased threshold of One Million Pesos (P 1,000,000); and*
2. *Whether or not an exemption from the prohibition on the issuance of letters of credit under Section 42.5 of IRR-A may be granted.*

Maximum Allowable Amount for Shopping

Section 10 of R.A. 9184 provides that all procurement shall be done through competitive bidding except in cases provided for in Article XVI on Alternative Methods of Procurement. One of the alternative methods is procurement through shopping. Section 52 of R.A. 9184 provides for the circumstances when resort to the alternative method of shopping may be allowed as well as the maximum amount for which it may be adopted, to wit:



Shopping may be resorted to under any of the following instances:

(a) When there is an **unforeseen contingency requiring immediate purchase**: Provided, however, That the amount **shall not exceed Fifty Thousand Pesos (P 50,000)**; or

(b) **Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding Two Hundred Fifty Thousand Pesos (P 250,000)**: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons. (Emphasis supplied)

Accordingly, the method of procurement to be conducted does not depend on the amount of the project, rather on the circumstances attendant thereto. In addition, R.A. 9184 limited the amount of procurement to Fifty Thousand Pesos (P 50,000) for unforeseen contingencies and Two Hundred Fifty Thousand Pesos (P 250,000) for ordinary or regular office supplies and equipment not available in the Procurement Service. No exemptions from these requirements and limitations are allowed under R.A. 9184 and its IRR-A. Neither did R.A. 9184 and its IRR-A give the GPPB the authority to grant exemptions thereto. If at all, the authority given to the GPPB is to increase or decrease the amounts in order to reflect changes in economic conditions and for other justifiable reasons. Even then, under Section 74 of R.A. 9184 and its IRR-A, such increase or decrease involves the amendment of the IRR-A, which necessitates the concerted act of the GPPB and the Joint Congressional Oversight Committee ("JCOC").

Anent the foregoing, it must be stressed that the GPPB has no legal basis to exempt SBMA from the thresholds provided in Section 52 of R.A. 9184 and its IRR-A, more so in increasing the limit of the ceiling to One Million Pesos (P 1,000,000).

Issuance of Letters of Credit

A reading of Sec. 42.5 of IRR-A of R.A. 9184 will reveal that the prohibition on the issuance of a letter of credit applies only when it is in favor of the following: (i) a Philippine entity; or (ii) any of its foreign manufacturers or suppliers. Sec. 42.5 of IRR-A of R.A. 9184 specifically provides as follows:

No procuring entity shall be allowed to issue a letter of credit **in favor of a Philippine entity** or to **any of the latter's foreign manufacturers or suppliers**, with respect to any procurement. (Emphasis supplied)

As can be gleaned from the above-cited provision, the issuance of a letter of credit in favor of a foreign manufacturer or supplier is not prohibited, what the provision disallows is the issuance of a letter of credit in favor of a foreign manufacturer or supplier of a Philippine



entity. This contemplates a situation where, by being the distributor or local supplier for the foreign manufacturer or supplier, the Philippine entity acts as the agent and the foreign manufacturer or supplier is the principal.

Being a product of international commerce, it is only imperative that the issuance of a letter of credit in favor of foreign manufacturers or suppliers be considered as an acceptable mode of payment, especially in cases of foreign procurement by the Government. A letter of credit is recognized as a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of the goods before paying.¹

In our jurisdiction, what is being prohibited and avoided is the situation where the procuring entity pays the supplier without the goods or services having been delivered. The rationale behind the proscription in the issuance of a letter of credit is couched on the fact that the same is a form of an advance payment; an eventuality frowned upon by Section 88 of Presidential Decree 1445 which provides:

Prohibition against advance payment on government contracts. - (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

(2) Notwithstanding the foregoing paragraph, any government agency, with the approval of the proper department head, may furnish supplies and materials to any party who has a contract with that agency if the supplies and materials are needed in the performance of the services being contracted for and the value thereof does not exceed in any one month ten percent of the value of the services already rendered due and unsettled as computed by the agency concerned.

Aside from the prohibition on the use of public funds for private purpose, advance payment is never countenanced for the simple reason that the government should not fund, directly or indirectly, the business endeavor of a supplier or manufacturer. It is an accepted fact that any person contracting with the Government for the rendition of services or delivery of supplies and materials is presumed to be 'logistically' prepared for the purpose. The assumption is that he has his own resources to rely upon in the performance of his contractual undertaking[s].²

While it is true that IRR-A prohibits the issuance of a letter of credit in favor of a Philippine entity and its foreign manufacturer or supplier, the same is not true when a procuring entity directly contracts with a foreign manufacturer or supplier as in the case of importation. Consequently, unless SBMA is procuring directly from a foreign supplier or

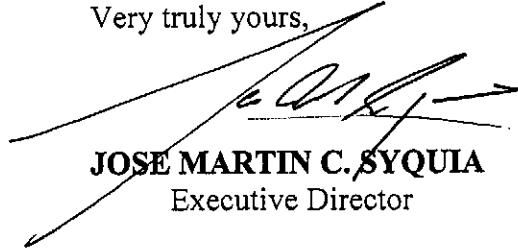
¹ *Bank of America, NT & SA v. Court of Appeals*, G.R. No. 105395, December 10, 1993.

² Bartolome C. Fernandez, *A Treatise on Government Contracts under Philippine Law*, p. 184 (2001).

manufacturer, the exemption being sought for under Section 42.5 of IRR-A of R.A. 9184 cannot be granted to your office.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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