



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 148-2012

29 November 2012

ATTY. CLARO JORDAN M. SANTAMARIA

President

READY FORM INCORPORATED (RFI)

Balagtas Street cor. Apitong Street

Marikina Heights, Marikina City

**Re: Government Procurement Policy Board (GPPB) Resolutions
on the Guidelines on the Procurement of Printing Services**

Dear Atty. Santamaria:

We respond to your numerous letters, including the correspondences you sent to several government agencies¹, which have been endorsed to us for appropriate action.

In your letters, RFI is questioning the validity of the exclusive printing privileges granted to three (3) recognized government printers (RGPs), namely, National Printing Office (NPO), Bangko Sentral ng Pilipinas (BSP), and APO Production Unit (APO), as stated in the following GPPB Resolutions:

1. GPPB Resolution 05-2010 - Guidelines on the Procurement of Printing Services approved on 29 October 2010; and
2. GPPB Resolution 04-2011 - Approving Amendments to the Guidelines on the Procurement of Printing Services approved on 25 February 2011.

A careful perusal of the claims made in your letters reveals that the primary issue for resolution is the determination of the appropriate rule that governs the procurement of printing services for Accountable Forms and Sensitive High Quality/Volume requirements. The following sub-issues are likewise raised:

- a. Validity of GPPB Resolution 05-2010 since allegedly only six (6) of the twelve (12) members of the GPPB signed the resolution; and,
- b. The inclusion of Local Government Units (LGUs) in the coverage of GPPB Resolution 05-2010.

¹ Department of Budget and Management, Department of Finance, Department of the Interior and Local Government, Department of Justice, Department of Transportation and Communications, National Economic and Development Authority, National Telecommunications Commission, National Bureau of Investigation and the Presidential Communications Operations Office.

Section 10 of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR) provide that all procurement shall be done through competitive bidding, except in highly exceptional circumstances when alternative modes of procurement may be adopted as provided in Rule XVI of the law and the rules. However, pursuant to GAA provisions² mandating that procurement of printing services for Accountable Forms and Sensitive High Quality/Volume requirements should be limited to the three (3) RGPs, the GPPB issued GPPB Resolution 05-2010 to provide guidelines on the procurement of Accountable Forms from the RGPs.

To fully address the issues, we refer to the legal bases prompting the issuance of the questioned GPPB Resolutions, and discuss the resulting rule concerning printing of Accountable Forms and Sensitive High Quality/Volume requirements.

Legal Background

Several Presidential issuances from the years 1987 to 2009 have been released with respect to the printing jurisdiction of NPO, granting it either exclusivity or removing such privilege. One of the issues raised by RFI is the status of NPO as an RGP since its exclusive printing jurisdiction has been removed based on Executive Order (EO) 378.

NPO was created under Section 6 of EO 285 issued on 25 July 1987 by then President Corazon C. Aquino. EO 285 is a law issued under the legislative power of President Aquino, which ended on 27 July 1987 when the first Congress under the 1987 Constitution convened.³ EO 285 granted NPO the exclusive jurisdiction over the printing, binding and distribution of all standard and Accountable Forms of national, provincial, city and municipal government, including government corporations, among others.

On 19 November 1998, the Office of the President (OP) issued Memorandum Order (MO) 38⁴, designating NPO to perform the printing of Accountable Forms with money value and other forms specially designed for the agency's requirements. Some of the salient features of MO 38 include the provision that if NPO is incapable to perform the job, it shall conduct public bidding to be participated by NPO-accredited security printers only. In addition, the printing of requested forms shall be done under strict control and supervision of NPO, and in the presence of its representatives, together with the representatives from the Commission on Audit and the requisitioning agency.

On 25 October 2004, President Gloria Macapagal-Arroyo issued EO 378, Section 1⁵ of which amended EO 285 by removing the exclusive jurisdiction of NPO over the printing requirements of government agencies and instrumentalities. EO 378 allowed government agencies/instrumentalities to source printing services elsewhere, apart from NPO, for as long

² Section 29 of RA 9970 (GAA of 2010), Section 25 of RA 10147 (GAA of 2011) and Section 22 of RA 10155 (GAA of 2012).

³ Go v. Court of Appeals, G.R. No. 172027, 29 July 2010.

⁴ Prescribing Guidelines in Contracting the Services of Accredited Private Security Printers for the Printing of Accountable Forms with Money Value and other Specialized Accountable Forms.

⁵ The NPO shall continue to provide printing services to government agencies and instrumentalities as mandated by law. However, it shall no longer enjoy exclusive jurisdiction over the printing services requirements of the government over standard and accountable forms. It shall have to compete with the private sector, except in the printing of election paraphernalia which could be shared with the Banko Sentral ng Pilipinas (BSP), upon the discretion of the Commission of the Elections consistent with the provision of the Election Code of 1987.


as the service provided by the private sector is superior in quality, at a lower cost, and flexible in terms of meeting the target completion date.

The constitutionality of EO 378 was questioned before the Supreme Court in the case of *Banda v. Ermita*⁶. *Banda v. Ermita* upheld the validity of EO 378 in removing the exclusive jurisdiction of the NPO over the printing requirements of government agencies and instrumentalities based on the following grounds:

- a. EO 378 is an exercise of a delegated legislative power granted to the President under Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987. Under the law, the President has continuing authority to reorganize the administrative structure of the OP in order to achieve simplicity, economy and efficiency, subject to the policy in the executive office.
- b. The 2003 General Appropriations Act (GAA), which was reenacted in 2004, gave the President the authority to effect a wide variety of organizational changes in any department⁷ or agency in the Executive Branch.
- c. EO 378 is wholly consistent with the state policy contained in RA 9184.

Prior to the promulgation of the aforesaid decision, on the basis of MO 38, the OP issued Memorandum Circular (MC) 180 on 13 August 2009, which consolidated the provisions of laws and issuances related to the printing of Accountable Forms. MC 180 reverted back to NPO its exclusive jurisdiction over the printing of Accountable Forms with money value and specialized Accountable Forms of the requisitioning office or agency, subject to the guidelines to be provided. This issuance was recognized by the Supreme Court as a move to harmonize EO 378 with other executive issuances and laws relating to the printing of government forms.⁸

In 2010, RA 9970 (GAA of 2010) was enacted, Section 29 of which provided that the printing of Accountable Form and Sensitive High Quality/Volume requirements shall only be undertaken by the three (3) RGPs, which are NPO, BSP and APO. The President's Veto Message provided that the implementation of Section 29 shall be subject to the guidelines to be issued by the GPPB. This provision is reiterated in the succeeding GAAs, *i.e.*, RA 10147 (GAA of 2011) and RA 10155 (GAA of 2012).

Pursuant to said mandates, GPPB issued Resolutions 05-2010 and 04-2011 reflecting the policy adopted by the Legislature that the printing of Accountable Forms and Sensitive High Quality/Volume requirements shall only be undertaken by NPO, BSP and APO, and providing the Guidelines for the engagement of the services of the appropriate RGP. 

⁶ G.R. No. 166620, 20 April 2010.

⁷ Approved on 8 February 2010.

⁸ *Banda v. Ermita*, Footnote 15.

Incompatibility between RA 9184 and the GAAs of 2010, 2011 and 2012


RA 9184 is the special law covering the modernization, standardization, and regulation of the procurement activities of the National Government. One of its governing principles is “competition”, reflected in Section 10 thereof, which states that all procurement shall be done through competitive bidding, except those falling under alternative methods of procurement. Nonetheless, resort to the alternative methods is only acceptable subject to the prior approval of the Head of the Procuring Entity (HOPE) and whenever justified by the conditions to promote economy and efficiency.⁹

On the other hand, it has been previously held by the Supreme Court that the GAA is a general law, which outlines the share in the national fund of all branches of the national government.¹⁰ The GAAs of 2010, 2011 and 2012 being general laws contain provisions instructing the departments, bureaus, offices or agencies of the National Government to contract with the three (3) identified RGP for the procurement of Accountable Forms and Sensitive High Quality/Volume printing requirements. The mandate embodied in the GAAs provides exclusive printing requirements to the three (3) RGP.

The well-established rule between laws is that a general law on a subject does not operate to repeal a prior special law on the same subject, unless it clearly appears that the legislature has intended the later general act to modify or repeal the earlier special law.¹¹ Stated otherwise, the legislature, by adopting a general law containing provisions repugnant to those of the special law and without making any mention of its intention to amend or modify such special law, cannot be deemed to have intended an amendment, repeal or modification of the latter.¹²

It bears stressing, however, that it is possible for a general rule to repeal or amend a special law as held by the Supreme Court in several of its decisions. Former Associate Justice Edgardo L. Paras in his book, *Civil Code of the Philippines Annotated*¹³ explained that even if the general law was enacted after the special law, the special law remains unless:

1. There is an express declaration to the contrary;
2. or there is a clear, necessary and unreconcilable conflict;¹⁴
3. or unless the subsequent general law covers the whole subject and is clearly intended to replace the special law on the matter.¹⁵

A careful reading of the relevant provisions in the aforecited GAAs and Section 10 of RA 9184 reveals that there is a clear, necessary and irreconcilable conflict between the two laws. As held by the Supreme Court in the case of *Compania General v. Collector of Customs*¹⁶, the rule is that a general law does not repeal another special one unless it is so expressly provided, or they are incompatible¹⁷. Thus, even though not expressed, there is a clear incompatibility between the GAAs and RA 9184 when it comes to the eligible printers for Accountable Forms and Sensitive High Quality/Volume requirements. 

⁹ NPM No. 65-2012 dated 28 May 2012.

¹⁰ Judge Leynes v. Commission on Audit, G. R. No. 143586, 11 December 2003.

¹¹ Agpalo, *Statutory Construction*, 5th Edition.

¹² Judge Leynes v. Commission of Audit, G.R. No. 143586, 11 December 2003.

¹³ Volume I (Persons and Family Relations, 16th Edition (2008).

¹⁴ *Compania General v. Collector of Customs*, G.R. No. L-21241, 7 April 1924.

¹⁵ In re: Guzman, 73 Phil 51, Joaquin v. Navarro, 81 Phil 373.

¹⁶ G.R. No. L-21241 dated 7 April 1924,

¹⁷ *Compania General v. Collector of Customs*, G.R. No. L-21241, 7 April 1924.

RA 9184 requires that all procurement shall be done through competitive bidding, which necessarily includes printing services covering Accountable Forms and Sensitive High Quality/Volume requirements. The GAAs, however, have restricted the scope of such printing activities to the three (3) identified RGPs, which became the basis for the issuance of GPPB Resolutions 05-2010 and 04-2011. Therefore, with respect to Accountable Forms and Sensitive High Quality/Volume printing requirements, the relevant GAA provision must be countenanced and given due regard vis-à-vis the general rule on public bidding under RA 9184.

Moreover, a subsequent statute, general in character as to its terms and application, is not to be construed as repealing a special or specific enactment, unless the legislative purpose to do so is manifest.¹⁸ In this case, it is evident that the inclusion of the provision of RGPs in the GAAs already passed through Congress and was subsequently approved by the President. Given the rigid process in the passage of the GAA, it is evident and clear that both the Legislative and Executive Departments intended to limit the printing of Accountable Forms and Sensitive High Quality/Volume requirements to the three (3) identified RGPs.

GPPB Validly Issued Resolution 05-2010

In the Certified True Copy (CTC) of GPPB Resolution 05-2010 being circulated by the Philippine Communications and Operations Office (PCOO)¹⁹, RFI alleges that only six (6) of the twelve (12) department Board representatives signed the Resolution. On this ground, RFI concludes that the Resolution was highly irregular and may constitute falsification.

Section 63.1(b) of the IRR of RA 9184 mandates the GPPB to formulate and amend public procurement policies, rules and regulations, and amend, whenever necessary the IRR. Section 64 of the IRR provides for the membership of the Board, which consists of twelve (12) member agencies and one (1) private sector representative. In making any decisions or resolving any issues presented before it, the Board members act as a collegial body with at least seven (7) votes constituting the majority. We note that RFI seriously erred in counting the correct number of Board members who should sign the Resolution in excluding the private sector representative. In the subject CTC, the Resolution was signed by the representatives from the (1) Department of Budget and Management; (2) Department of National Defense; (3) Department of Public Works and Highways; (4) Department of Education; (5) Department of Trade and Industry; (6) Department of Finance; and, (7) Private Sector. RFI's claim that the issuance of GPPB Resolution 05-2010 is highly irregular is clearly unfounded, misinformed, and without any legal basis. To even suggest that the act of the GPPB in issuing Resolution No. 05-2010 may constitute falsification is a grave accusation that warrants careful and responsible review and study of available documents and papers; unfortunately apart from being misguided, the claim is obviously not substantiated by the very evidence to which RFI bases its false allegation.

We strongly advise RFI to verify the facts first before it makes baseless accusations against the GPPB. In this case, at the very least, it should carefully count the signatures appearing on the CTC of GPPB Resolution 05-2010. RFI's reference to the published copy

¹⁸ *Bocobo v. Estanislao*, G.R. No. L-30458, 31 August 1976.

¹⁹ RFI letter dated 5 March 2012 to Secretary Herminio S. Coloma, Jr. of the PCOO.

of the Resolution bears little significance as reference should always be made to the original copy as to verify that at least a majority of the GPPB approved the Resolution.

LGUs are Covered by RA 9184 and its IRR



We wish to reiterate that Section 4 of RA 9184 applies to all procurement of any branch, agency, department, bureau, office, or instrumentality of the Philippine government, including government-owned and/or -controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs) and LGUs. Consequently, all the policies, rules and regulations, including guidelines that the GPPB issues, would have the same general application and coverage.


As discussed in a previous opinion²⁰, the GPPB has no authority to grant exemptions from the implementation of RA 9184 and its IRR as it is "bereft of 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.'"²¹

Based on the foregoing, it is our position that given the incompatibility between the GAAs and Section 10 of RA 9184 and its IRR, GPPB Resolution Nos. 05-2010 and 04-2011 are valid issuances, insofar as the RGPs are concerned relative to the printing of Accountable Forms and Sensitive High Quality/Volume printing requirements, pursuant to the relevant provisions in the GAAs of 2010, 2011 and 2012, and they shall remain applicable inasmuch as the policy enunciated in the GAA of 2010 is entirely adopted in the succeeding GAAs, unless a contrary or inconsistent policy is adopted. As regards the sub-issues, GPPB Resolution 05-2010 is validly issued having been approved by at least a majority of the members of the Board and included in its coverage are the LGUS.

We trust that this clarifies matters.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III 

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²⁰ NPM No. 136-2004 dated 20 October 2004.

²¹ Cruz, Philippine Administrative Law, 1998 Ed. pp. 33-34 citing 73 CJS Public Administrative Bodies, Sec. 31.