

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. 15-2005

February 22, 2005

ENGR. DENNIS A. AGUILAR
Chairman, Bids and Awards and Committee
Municipality of Patnanungan
Province of Quezon

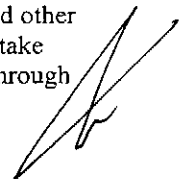
Re: Clarification on various provisions of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A)

Dear Engr. Aguilar:

This refers to your letter dated 14 December 2005, requesting for clarification on several issues concerning the implementation of Republic Act No. 9184 (R.A. 9184). As mentioned, these issues are raised in view of preparing a handy reference in resolving mind predicaments that may confront the municipality's Bids and Awards Committee (BAC) in their future projects. The issues are as follows:

1. In cases specified under Section 53 (b) of R.A. 9184,¹ who determines that immediate action is necessary to restore vital services -- is it the Sangguninang Bayan or the Local Chief Executive?

¹ 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: xxx (b) in case on 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 facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;



2. After a resolution of the BAC recommending to the Local Chief Executive that the project (e.g. repair of wooden foot bridge, replacement of roofing sheets for school building and repair of any public places) be implemented "by administration," is an authority of the Sanggunian still required?
3. In the case of Local Government Units, who is the approving authority frequently mentioned in R.A. 9184?
4. What is the classification of ordinary or regular equipment in the context of Section 52 (b) of R.A. 9184²?
5. Does a generator set with an approved budget of One Hundred Fifty Thousand (P150, 000.00) qualify for resort to the alternative method of Shopping?
6. Does a purchase of medicine amounting to Two Hundred Thousand Pesos (P200, 00.00) qualify for resort to Shopping as an alternative mode of procurement?
7. The Municipality of Patnanungan has no available technology to comply with requirements of electronic procurement. Is it still required to conduct bidding activities by electronic means?

Internal rules and regulations of local government units primarily govern its exercise of administrative prerogatives

R.A. 9184 merely prescribes the standard 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. Incidentally, it is not concerned with the rules, processes or systems which may be adopted by and internal to the procuring entity in view of complying with the requirements of said law. Thus, the determination by the LGUs of the conditions under which any alternative method of procurement may be resorted to is outside the ambit or prescription of R.A. 9184 and its IRR-A.

The present procurement law requires the prior approval of the head of the procuring entity or his duly authorized representative in cases where resort to any of the alternative methods of procurement is sought. The process a procuring entity takes to arrive at a decision is to be governed by the internal rules of procedure of the

² Shopping is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed only in any of the following cases: xxx (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 (P250,000): Provided, however, that the procurement does not result in splitting of contracts, as provided in Section 54.1 of this IRR-A: Provide, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.

procuring entity pursuant or subject to relevant laws and rules³ but without prejudice to the prescriptions provided under the procurement law. For lack of jurisdiction over the matter, we regret that we should defer to answer the questions.

Thus, whether authority of the Sanggunian is required in cases of resort by the local government unit to alternative methods of procurement is determined by the interplay of its internal rules and policies and applicable statutes.

Approving authority frequently mentioned in R.A. 9184

In the case of Local Government Units, the approving authority frequently mentioned in R.A. 9184 and its IRR-A refers to the Head of the Procuring Entity. In Section 5 (j) of R.A. 9184, the Head of the Procuring Entity shall be the Local Chief Executive as defined in Republic Act 7160.⁴ The power of approval however of the Local Chief Executive does not preclude delegation by him to any authorized person of the local government unit pursuant to existing rules and policies.

Ordinary or Regular Office Supplies and Equipment in the context of Section 52(b) of R.A. 9184

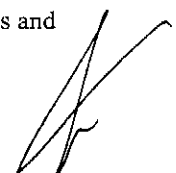
Ordinary or regular office supplies, in the context of Section 52 (b) of IRR-A, refer to those consumable or non-consumable office materials required in the day to day administrative operations of the procuring entities. These are materials which are expendable and normally consumed within one year. These contemplate supplies referred to as Common-Use Supplies⁵ but are limited to office use which due to their nature and intended use, have the potential of being included in the Price List of the Procurement Service (PS).

On the other hand, ordinary or regular office equipment, in the context of Section 52 (b) of R.A. 9184, includes machineries, tools and devices more or less permanent in nature recurringly used in the day to day administrative operations of the procuring entities. They are not subject to rapid turnover and normally have a useful life of more than one year. When used, these items do not suffer any material or substantial change or alteration in size or in form, thus, do not lose their identity when used or applied.

³ See applicability of the Local Government Code of 1991 (R.A. 7160)

⁴ Under R.A. 7160, otherwise known as the Local Government Code of 1991, the Local Chief Executive refers to the Provincial Governor in case of provincial governments; to the City Mayor in case of cities; and to the Municipal Mayor in the case of municipalities.

⁵Section 5 of the IRR-A defines Common Use Supplies as those goods, materials and equipment that are repetitively used in the day-to-day operations of procuring entities in the performance of their functions. For the purpose of this IRR-A, common-use supplies shall be those included in the Price List of the Procurement Service (PS) of the Department of Budget and Management (DBM). However, it should be noted that the Common-Use Supplies as contemplated under the aforementioned law is different from the general office supplies perceived as common to all offices and agencies which is undoubtedly larger in scope. Hence, although an office supply may be common to all offices and agencies, such item may not be necessarily included in the Price List of the PS.



In view of the foregoing, a generator set does not fall under the contemplation of Section 52 (b) of the IRR-A of R.A. 9184 since, as earlier explained, the concept of "ordinary and regular office supplies or equipment" refers to those supplies used in the day-to-day administrative operations of the office. Interestingly, generator sets are not usual to the operation of an office and its use is not habitual or regular in the administrative operations of the procuring entity.

Propriety of procurement of medicines worth P200,000.00 by way of Shopping

Shopping is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualification. This method of procurement shall be employed only in any of the two (2) conditions prescribed by IRR-A.⁶

In this vein, the purchase of medicine amounting to P200, 000.00 does not qualify in any of the conditions allowing resort to shopping as an alternative method of procurement. First, the hypothetical issue does not raise as justification the attendance of any unforeseen contingency. Also, the purchase of medicine in this case exceeds the capital amount for the employment of shopping as a method of procurement. The amount of purchase in that case should not exceed fifty thousand pesos (P50, 000.00).

Second, regardless of the amount involved, purchase of medicines is not among the procurements contemplated in Section 52(b) of the IRR-A of R.A. 9184. What is contemplated in the second proviso of the said provision is the procurement of ordinary or regular office supplies which category medicine is not species of.

Clearly, the purchase of medicine amounting to Two Hundred Thousand Pesos (P200, 000.00) may not be procured through the alternative mode of Shopping.

Requirement of Procurement by Electronic Means

The law mandates the use of information and communications technology in the conduct of procurement procedures; and to take advantage of the significant built-in efficiencies of the G-EPS and the volume discounts inherent in bulk purchasing, all procuring entities shall utilize the G-EPS for the procurement of common-use supplies.⁷ Specifically, the law makes posting requirements and registration of manufacturers, suppliers, distributors, contractors and/or consultants to be complied with by full use of the G-EPS.

However, due to non-availability or non-readiness of the other technological features of the electronic system, the use of the same is practically limited by these conditions, and only to the extent available. This does not however imply an exemption of those procuring entities that do not have the technological capability for

⁶ Section 52, IRR-A.

⁷ Section 8, R.A. 9184.

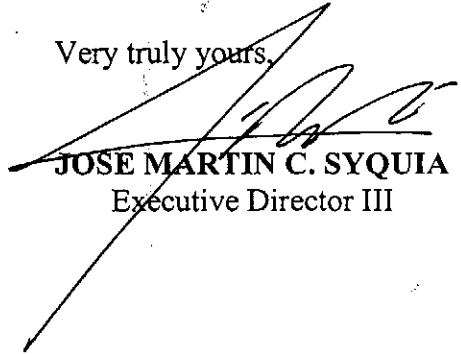
the system. To the extent available, the electronic system of procurement, by mandate, should be fully used by all procuring entities.

On this point, the procuring entities may adopt measures or means to be able to comply with the mandate. This is especially true in posting requirements where the procuring entity may outsource performance thereof. In fact, procuring entities may ask G-EPS to do the posting for them; or, in worse eventualities, seek the services of internet providers at minimal costs and for a limited time, for this purpose.

However, with regard to the issue concerning Department Order No. 30, Series of 1991, we are unable to provide clarification thereto inasmuch as we are unable to perceive what Department Order exactly is being referred to. Otherwise, we would have gladly answered your query with our best efforts.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

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January 10, 2005

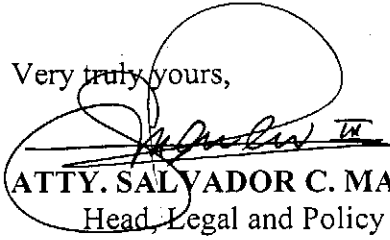
ENGR. DENNIS A. AGUILAR
Chairman
Bids and Awards Committee
Municipality of Patnanungan
Province of Quezon

Dear Engr Aguilar:

This refers to your letter dated 14 December 2005, which we received on 07 January 2005, requesting for clarification on several concerns on 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 Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,


ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group