

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 021-2004

February 26, 2004

MR. ROSENDO A. MORALES
OIC - City Legal Officer ;
Member, Bids and Awards Committee
Office of the City Legal Services
Calbayog City

Re: Queries on R.A. 9184 and its IRR

Dear Mr. Morales:

This refers to your letter dated January 19, 2004, addressed to the Chairman of the Government Procurement Policy Board ("GPPB"), which we received on February 5, 2004. In the said letter, you raised the following queries, to wit:

1. Who will constitute the Bids and Awards Committee at the Barangay level? When shall it become effective? Can the various barangays still utilize the BAC of the city level pending the constitution of BAC at the Barangay level?
2. Are the members of the BAC Secretariat entitled to honoraria under IRR-A of R.A. 9184? How much will they receive?
3. Considering that the BAC Secretariat will evolve into an organic office, can its members be allowed to work in his or her mother office?
4. The Chairman of the Bids and Awards Committee is the City Administrator and at the same he was authorized by the City Mayor to act as the approving officer for and his behalf in all transactions not exceeding the amount of PHP 100,000.00. Is he allowed to do so? Did he infringe any existing provision of law with this set up?
5. What is the role of the General Services Office (GSO) an existing department in our local government office, particularly the Procurement Division, in the present system of procurement?
6. Are those local dealers which are selling common and non-common supplies and not registered under the G-EPS still allowed to participate in the procurement during emergency cases?

Membership of Bids and Awards Committee ("BAC") in Barangays

Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") are silent as to the composition of the BAC in the barangay level. However, recognizing the need to create the barangay BAC, the matter was brought to the GPPB for appropriate action. At present, the BAC membership in the barangay is still being determined and studied by the Government Procurement Policy Board-Technical Support Office ("GPPB-TSO") and the Department of Interior and Local Government ("DILG"). Meanwhile, pending the issuance of such guidelines, barangays may procure through "outsourcing," an alternative method allowed under section 53 (e) of the IRR-A of R.A. 9184, to wit:

Section 53. Negotiated Procurement

xxx xxx xxx

e) Purchase of goods from another agency of the Government, such as the PS-DBM, which is tasked with the centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction no. 755 and Executive Order No. 359, series of 1989. Further, in order to hasten project implementation, **agencies which may not have the proficiency or capability to undertake a particular procurement, as determined by the head of the procuring entity concerned, may request other agencies to undertake such procurement for them**, or at their option, recruit and hire consultants or procurement agents to assist them directly and/or train their staff in the management of the procurement function. (Emphasis supplied).

For guidance, procurement "outsourcing" may be resorted to by requesting the municipality or city having jurisdiction over the barangay to undertake the procurement in its behalf following the rules and procedures under R.A. 9184 and its IRR-A.

Honoraria for Bids and Awards Committee Secretariat ("BAC Secretariat")

Under R.A. 9184, the office of BAC Secretariat shall evolve as an organic or permanent office in the procuring entity, performing specific functions as provided for in Section 14 of the IRR-A of R.A. 9184. Thus, the payment of honoraria to BAC Secretariat members shall be considered as an additional compensation for the same functions, which is prohibited under Section 8, Article IX of the 1987 Constitution, to wit:

No elective or appointive public officer or employee shall receive additional, double compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. x x x x
(Emphasis supplied)

Consequently, the procuring entity cannot grant honoraria to BAC Secretariat members if the head of the procuring entity has created an organic or permanent office to serve as BAC Secretariat.

On the other hand, if the head of the procuring entity has designated an existing organic office within the procuring entity to serve as BAC Secretariat and perform the duties, responsibilities and functions thereof, in addition to the duties, responsibilities and functions of their present office and current position, the procuring entity may grant honoraria to such personnel designated as members of BAC Secretariat, subject to the availability of funds and the guidelines to be issued by the Department of Budget and Management on the matter.

BAC Secretariat as an organic office

Considering that the head of the procuring entity may create an organic office to serve as BAC Secretariat, personnel from such office shall be performing only the functions assigned to them. Section 14.1 of IRR-A of R.A. 9184 provides:

The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. He may also designate an existing organic office within the said procuring entity to serve as Secretariat. However, to strengthen and promote the professionalization of the organizations' procuring unit, **he may reorganize this unit by designating it as BAC Secretariat and redeploying appropriate existing personnel to it to perform this function, as well as procurement related task.** x x x x (Emphasis supplied)

Based on the above-cited provision, the head of the procuring entity may either designate an existing organic office within the procuring entity to serve as BAC Secretariat or create an organic office for that purpose. The procuring entity's procurement activities shall determine the need to create an organic office for BAC Secretariat. Being an organic office, the members' time and effort shall be devoted in providing secretariat functions to the BAC members and in performing the functions as enumerated under Section 14.1 of IRR-A of R.A. 9184.

City Administrator as Chairman of the BAC

Bearing in mind that the City Administrator is at the same time authorized by the City Mayor to act as the approving officer for and his behalf, in all transactions not exceeding the amount of Php 100,000.00, the City Administrator cannot be the Chairman of the Bids and Awards Committee ("BAC"), this proscription is sanctioned by Section 11.2.5 of the IRR-A of R.A. 9184, to wit:

In no case shall the head of the procuring entity and/or the **approving authority** be the Chairman or a member of the BAC (Emphasis supplied)

It is clear from the above-quoted provision that the City Administrator, being the approving authority, cannot be the Chairman of the BAC. This limitation on the approving authority is in line with the rules and principles of good internal control and to avert the possibility of conflict of interest.

The Role of the General Services Office ("GSO")

In Local Government Units, members of the BAC shall come from, but not limited to the following offices, Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices, as provided under Section 11.2.2 of IRR-A of R.A. 9184, 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 members of the BAC shall be personnel occupying plantilla positions of the procuring entity concerned. (Emphasis supplied)

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.

Based on the above-quoted provision, a representative from the GSO can be designated by the local chief executive as a member of the BAC. Moreover, such representative may be elected as the Chairman or Vice-Chairman of the BAC, provided that he holds the position of at least a third (3rd) ranking permanent official.

Registry of Manufacturers, Suppliers, Distributors, Contractors and Consultants

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures in the government. Accordingly, the Government Electronic Procurement System ("G-EPS") has been established to serve as the primary source of information on all government procurement opportunities.

In this connection, the G-EPS shall maintain a centralized electronic database of all manufacturers, suppliers, distributors, contractors and consultants. Thus, manufacturers, suppliers, distributors and consultants interested in participating in government procurement are mandated to register with the G-EPS. Section 8.5.1 of IRR-A of R.A. 9184, provides that:

Manufacturers, suppliers, distributors, contractors and/or consultants shall register with the G-EPS. All procuring entities already maintaining an electronic registry upon the effectivity of this IRR-A shall integrate the same with that of the G-EPS. A manufacturer, supplier, distributor, contractor or consultant duly registered with the G-EPS may participate in a procurement undertaken by any procuring entity, provided that the said manufacturer, supplier, distributor, contractor or consultant maintains its registration current and updated in accordance with the provisions of this IRR-A, and its registration is proper and relevant to the particular type of procurement. (Emphasis supplied)

The use of the word "**shall**" in the above-quoted provision spells out clearly the mandatory character of the registration of manufacturers, suppliers, contractors or consultants with the G-EPS. It may be added that this mandatory requirement applies both to procurement through competitive bidding and procurement using the alternative methods. Hence, local dealers, suppliers, manufacturers and contractors must register with the G-EPS to be able to participate in any of the procurement activities of the said procuring entity.

However, in exceptional cases, the requirement that procuring entities must procure only from registered suppliers may be relaxed. In cases of emergency, when time is of the essence or the procurement is an exigency, which requires immediate action on the part of the procuring entity in order to prevent damage or loss of life or property, the procuring entity may procure from suppliers not registered with the G-EPS. Section 53 of the IRR-A of R.A. 9184 provides:

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:

x x x x

- b) In cases 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)

The above-cited provision contemplates emergency cases where the procuring entity may resort to negotiated procurement. In these cases, we are of the opinion that the procuring entity may procure from non-registered suppliers or contractors since the procurement calls for an immediate action on the part of the procurement entity so as not to cause damage or loss of life or property. However, it must be noted that although the procuring entity may procure from non-registered supplier or contractor, the procuring entity is required to invite at least three (3) suppliers or contractors to submit bids as provided under Section 54.2 (b); to wit:

For items (a) and (b) of Section 53, in case of goods and infrastructure projects, the procuring entity shall draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed. (Emphasis supplied)

Likewise, the procuring entity may also procure from non-registered suppliers or contractors when there is an unforeseen contingency requiring immediate procurement as provided under Section 52 (a) of IRR-A of R.A. 9184; to wit:

When there is an **unforeseen contingency requiring immediate purchase**:
Provided, however, That the amount shall not exceed fifty thousand pesos
(P50,000) (Emphasis supplied)

In view of the foregoing, we believe that, as a general rule, procuring entities must procure only from registered manufacturers, suppliers, contractors or consultants, even in cases of alternative methods of procurement except only in exceptional circumstances contemplated by Section 52 (a) and 53 (b) of IRR-A of R.A. 9184, where immediate action is necessary.

We trust that this clarifies matters.

Very truly yours,



JOSE MARITN C. SYQUIA
Executive Director

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