



TECHNICAL SUPPORT OFFICE

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Pasig City, Philippines 1605

NPM No. 26-2005

April 25, 2005

MR. ANSELMO L. SANG TIAN, CE
General Manager
Butuan City Water District
Gen. Jose A. Rosales Avenue,
Butuan City

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

Dear Mr. Sang Tian:

This refers to your letter dated 05 April 2005 which we received on 14 April 2005, requesting for clarification on the following substantive issues:

1. Whether or not the Bids and Awards Committee (BAC) has the right to modify or contravene the substance of Section 36 of Republic Act 9184 (R.A. 9184); and
2. Whether or not the BAC is given the discretion to declare a failure of bidding if only one complying bidder passes the bidding process.

These issues arise because of your concern against failing to achieve the objective of obtaining the most economical price or the lowest bid price advantageous to the government or the agency concerned.

Single Calculated/Rated and Responsive Bid Submission

Section 36 of the IRR-A of R.A. 9184 provides that a single calculated/rated and responsive bid shall be considered for award. Clearly, notwithstanding the fact that only one bidder is determined to have responded to the requirements of the procuring entity, this fact should not forestall the bidding process or justify a declaration of a failure of bidding. The only caveat in the provision is that, in all instances, the procuring entity shall ensure that the ABC reflects the most advantageous prevailing price for the government.

Failure of Bidding

A failure of bidding may be declared only in the cases provided under Sections 35.1 and 41.1 of the IRR-A of R.A. 9184. Apparently, the law expressly enumerates and limits the specific instances when there may be a failure of bidding, as well as when a specific bidder may be disqualified or declared ineligible. The legislative intent is that there can be no other valid and justifiable grounds for such actions outside the aforesaid instances. Clearly, the BAC is not in any way, given discretion to declare a failure of bidding outside those expressly enumerated under the law.

Moreover, R.A. 9184 having been enacted for the advancement of public welfare undoubtedly contains mandatory provisions. The omission then to follow such rules renders the proceeding to which it relates illegal and void, or the violation of which makes the decision therein rendered invalid.¹ Indisputably therefore, the BAC is not in any way given any discretion to modify, more so, to contravene the provisions of this procurement statute. Violation thereto is evidently tantamount to the penal sanctions provided for under the said law.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

¹ Agpalo, Ruben E., Statutory Construction, 1995 ed., p. 25