

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD

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NPM No. 33-2004

March 22, 2004

MR. FRANK S. ABALOS
Corporate Board Secretary
National Irrigation Administration
E. De Los Santos Avenue,
Quezon City

Re: Clarification on the Proposed Supplemental Agreement No. 1 to Contract No. BBMPD-C-3, Construction of North Main Canal and its appurtenant structures, Balog-balog Multipurpose Project under Contract with A.M. Oreta & Co., Inc.

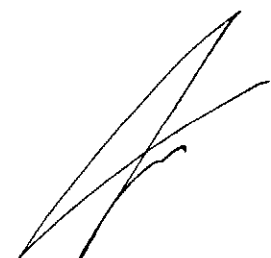
Dear Mr. Abalos:

This refers to your letter dated November 12, 2003, requesting the Government Procurement Policy Board ("GPPB") for clarification on whether National Irrigation Administration ("NIA") could issue the Proposed Supplemental Agreement No. 1 to Contract No. BBMPD-C-3, construction of North Main Canal and its appurtenant structures, Balog-balog Multipurpose Project, based on the applicable provisions of Implementing Rules and Regulations ("IRR") of Presidential Decree No. 1594 ("P.D. 1594").

Applicability of P.D. 1594 and its IRR

In light of the passage of R.A. 9184 and its IRR-A, all procurement laws, rules and regulations and such other law, presidential decree, or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of the said laws, are deemed repealed or amended accordingly.

However, it must be noted that the repeal or amendment of existing laws and regulations on procurement and government contracts by R.A. 9184 has no retroactive effect, in view of the transitory clause of its IRR-A, to wit:



Section 77. In all procurement activities where the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

Based on the foregoing, it is evident that notwithstanding the passage of R.A. 9184 and its IRR-A prior procurement laws, rules and regulations still govern the procurement and implementation of certain government contracts, if the advertisement or invitation for bids were issued prior to the effectivity of the GPRA or its IRR-A.

On these premises, we are of the opinion that NIA may issue the proposed supplemental agreement (Supplemental Agreement No. 1 to Contract No. BBMPD-C-3) for the construction of Laterals A, B, and C as replacement works to the deleted portion of the North Main Canal under the guidelines of the IRR of P.D. 1594 as amended. Indubitably, the original contract for the construction of North Main Canal, Balog-balog Project took effect last November 18, 2000 and hence, it is apparent that the invitation for bids for the same was issued long before the effectivity of R.A. 9184 and its IRR-A.

With the foregoing elucidations, we trust that our opinion has provided NIA with needed information in the issuance of the supplemental agreement.

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

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

pia/pm