

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

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NPM No. 36-2004 (A)

March 26, 2004

MR. CAYETANO A. GELI
Information System Analyst III
New Government Accounting System ("NGAS")
Commission on Audit ("COA")

Re : Development of a Computerized New Government Accounting System ("NGAS") for the Inventory System ("IS") Module

Dear Mr. Geli:

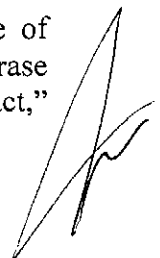
This refers to your letter dated September 22, 2003, addressed to Director Estanislao C. Granados of the Procurement Service, which was referred to our office on December 19, 2003. In said letter, you raised the following queries:

1. Does the phrase "contract modified in writing" under the last sentence of paragraph 1.1, Annex "D," of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184") merely refer to modification of the original contract; or, does it include cancellation of the original contract?
2. Does R.A. 9184 require the procuring entities to prepare a Supplemental Procurement Plan ("SPP") and an Amendatory Procurement Plan ("APrP")?
3. What would be the basis of the procurement of inventories by government agencies if the General Appropriations Act ("GAA"), which specifies the appropriations allotted for the projects of an agency and for which the approved budget for the contract ("ABC") in all procurement activities of an agency shall be consistent with, has not yet been enacted by Congress?

These queries were raised in connection with the development of the Computerized NGAS for the IS Module of the COA.

Annex "D" of the IRR-A

In construing the phrase "contract modified in writing" under the last sentence of paragraph 1.1, Annex "D" of the IRR-A of R.A. 9184, we are of the opinion that the phrase needs no further interpretation. As the phrase merely calls for a "modified contract,"



cancellation of the original contract is not required. In fact, Section 1 of Annex "D" refers to Amendments to Order in the original contract, not cancellation or extinguishment of the same. An Amendment to Order is an equitable change or adjustment in the contract price, delivery schedule or other requirements of the project within the general scope of the contract, under the specific circumstances prescribed in Section 1, Annex "D," of the IRR-A. Although, the modified contract, as a result of an Amendment to Order, may have been novatory, in so far as some of the terms of the original contract were changed or adjusted, the remaining provisions of the contract remain and continue to be operative and effective. Consequently, an Amendment to Order does not amount to cancellation of the original contract.

SPP and APrP, Regarded as Update to the PPMP or APP

As regards procurement planning, the IRR-A, specifically Section 7.2, limits the required procurement plans into two (2), APP and Project Procurement Management Plan ("PPMP"). The PPMPs, for each individual project, is prepared by the respective Project Management Offices ("PMOs") or end-user units of the procuring entities, while the consolidation of these PPMPs into an APP is lodged with the BAC Secretariat of the procuring entity.

Moreover, although the individual PPMPs and the consolidated APP shall be updated every six (6) months or as often as may be required by the head of the procuring entity, the preparation of an SPP and/or APrP, is no longer required for purposes of compliance with R.A. 9184 and its IRR-A. However, your office may still opt to prepare an SPP or APrP, in addition to the APP, especially if such practice has contributed to an efficient and judicious procurement planning in your agency.

Basis of Procurement when no GAA has been enacted yet

Section 7.1 of the IRR-A is quoted hereunder, to wit:

"All procurement should be within the approved budget of the procuring entity and should be meticulously and judiciously planned by the procuring entity concerned. No government procurement shall be undertaken unless it is in accordance with an approved Annual Procurement Plan (APP).

x x x x

The ABC for the contract shall be at all times consistent with the appropriations for the projects authorized in the GAA and/or continuing appropriations, in the case of NGAs; the corporate budget approved by the governing boards, pursuant to E.O. 518, in the case of GOCCs; and the budget approved by the Sanggunian in the case of LGUs."

(Emphasis Supplied)

Based on the above-quoted provision, it is clear that all procurement activities shall be in accordance with the approved budget of the procuring entity for the fiscal year. It does not follow, however, that until the GAA has been enacted by Congress, no government procurement may be carried out by national government agencies ("NGAs") considering that we adhere to the principle of "automatic reappropriation," under Section 25 (7), Article VI of the 1987 Constitution, which we quote hereunder, to wit:

“ If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, **the general appropriations law for the preceding fiscal year shall be deemed reenacted** and shall remain in force and effect until the general appropriations bill is passed by the Congress.”
(Emphasis Supplied)

Assuming that the GAA for the current year has not yet been enacted by Congress, we believe that the procuring entity may, in the meantime, use its budget for the previous year, consistent with the GAA of the preceding fiscal year, as the basis of its procurement until the GAA for the current year is passed and enacted.

Moreover, in this instance, the procuring entity may prepare and approve its Annual Procurement Plan, on the basis again of the approved budget for the preceding fiscal year. Should the GAA for the current year be enacted, then the APP shall, necessarily, be updated to conform with the newly approved budget for the current year.

With the foregoing elucidations, we trust that our opinion has provided COA the needed information in its development of a Computerized NGAS for its IS Module.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director