

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 037-2004 (B)

March 29, 2004

MR. PELAGIO D. OBLIGACION JR.
Administrative Officer IV
Provincial General Services Office
Province of Quirino
Municipality of Cabarroguis

Re : Repeal by IRR-A of R.A. 9184 of the Provisions of R.A. 7160 regarding the PBAC

Dear Mr. Obligation:

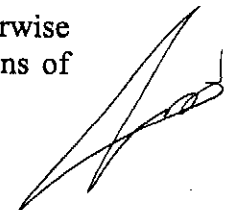
This refers to your letter dated February 4, 2004, addressed to Director Isabel C. Taguinod of the Department of Budget and Management Region II, which was referred to our office on February 19, 2004, requesting for clarification on the effect of the provisions of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") on the provisions of Republic Act 7160 ("R.A. 7160"), particularly on the existence of the Pre-Qualification Bids and Awards Committee ("PBAC"). This concern stems from the fact that the provisions of R.A. 7160 regarding the PBAC was expressly repealed, not under R.A. 9184, but its IRR-A. The issue now before us is as follows:

Whether or not R.A. 9184 and its IRR-A effectively repealed Chapter 5, Title One, Book One of R.A. 7160 which provides for the creation and composition of the PBAC.

Repeal of PBAC under R.A. 9184 and its IRR-A

Along with the relevant provisions of Executive Order 164, Series of 1987 and Republic Act 7898, the provisions of Title Six, Book Two of R.A. 7160 were effectively amended by R.A. 9184 as provided Section 76 thereof. Moreover, any other statutes and issuances contrary or inconsistent with its provisions were also repealed, modified or amended accordingly, to wit:

This law amends **Title Six, Book Two of Republic Act No. 7160**, otherwise known as the 'Local Government Code of 1991'; the relevant provisions of



Executive Order No. 164, Series of 1987, entitled "Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government"; and the relevant provisions of Republic Act No. 7898 dated February 23, 1995, entitled "An Act Providing for the Modernization of the Armed Forces of the Philippines and for Other Purposes." **Any 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 this Act is hereby repealed, modified or amended accordingly.** (Emphasis supplied)

It is apparent from the above-quoted provision that the repeal or amendment of Chapter Five, Title One, Book One of R.A. 7160 was not expressly stated therein. However, by reason of inconsistency and the principle of implied repeal by substitution, the provisions of Sections 37 – 38 of R.A. 7160 may be considered amended by the provisions of R.A. 9184, specifically with Article V, Sections 11 to 12 therein. Under Section 37 of R.A. 7160, the PBAC has the following functions and characteristics:

1. The governor or the city or municipality mayor shall act as the chairman;
2. The members shall be as follows: (a) the chairman of the appropriations committee of the sanggunian concerned; (b) a representative of the minority party in the sanggunian concerned, if any, or if there be none, one (1) chosen by said sanggunian from among its members; (c) the local treasurer; (d) two (2) representatives of nongovernmental organizations that are represented in the local development council concerned, to be chosen by the organizations themselves; and (e) any practicing certified public accountant from the private sector, to be designated by the local chapter of the Philippine Institute of Certified Public Accountants, if any; and
3. Shall be primarily responsible for the conduct of prequalification of contractors, bidding, evaluation of bids, and the recommendation of awards concerning local infrastructure projects only.

The Bids and Awards Committee ("BAC"), on the other hand, has the following functions and characteristics as provided in Sections 11 and 12 of R.A. 9184:

1. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR;
2. It shall have at least five (5), but not more than seven (7), members designated by the Head of the Procuring Entity, but in no case shall the approving authority be a member thereof; and
3. Shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized

representative, recommend the imposition of sanctions in accordance with Article XXIII, and perform such other functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

With respect to Section 38 of R.A. 7160 which provides for the creation of a Local Technical Committee to provide technical assistance to the PBAC, the same has been substituted with the Technical Working Group which the BAC may create from a pool of technical, financial and/or legal experts to assist in the procurement process.

In view of the foregoing, it is evident that the Legislature intended to amend the provisions of Chapter Five, Title One, Book One of R.A. 7160 through the provisions of R.A. 9184, albeit impliedly. We agree with the observation that implementing rules and regulations sometimes go in excess of the textual provisions of the law without reflecting its real intent. However, it is clear from the above discussions that the same does not hold true in the IRR-A of R.A. 9184 when it provided for the amendment of Chapter Five, Title One, Book One of R.A. 7160 in furtherance to the amendment provided by R.A. 9184 to Title Six, Book Two of R.A. 7160.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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