

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**  
*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
*Telefax Nos. (02) 735-4962; (02) 736-5758*

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**NPM No. 038-2004**

March 29, 2004

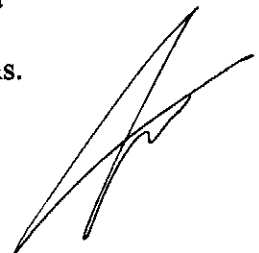
**ENGR. MANSUETO O. ILAGAN**  
Municipal Engineer  
Tanggapan ng Pambayang Inhinyero  
Lalawigan ng Batangas  
Bayan ng San Jose

**Re : Queries on the Provisions of R.A. 9184 and its IRR-A and its  
Repeal of Section 444 (b) of R.A. 7160**

Dear Engr. Ilagan:

This refers to your letter dated February 5, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board ("GPPB"), which was referred to our office on February 24, 2004, requesting for clarification on the following:

1. Whether or not Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") repealed Section 444(b) (vi) of Republic Act 7160 ("R.A. 7160") which provides that upon authorization of the Sangguniang Bayan, the Local Chief Executive ("LCE") has the power to represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations and such other documents made pursuant to law or ordinance;
2. Whether or not posting at any conspicuous place reserved for the purpose sufficient to satisfy the conditions stated in Sections 21.2.3 and 21.2.4 of the IRR-A of R.A. 9184 when website is not available;
3. Whether or not the maximum amount of Php50,000.00 and Php250,000.00 stated in Section 52(b) of IRR-A of R.A. 9184 applicable for a period of one month, one year or per transaction;
4. Whether or not the cost/rate of bidding documents as provided under Section 17.5 of IRR-A subject to Sangguniang Bayan ordinance; and
5. Where to charge honoraria for BAC members and its legal limitations.



## Repeal by R.A. 9184 and its IRR-A of Section 444 of R.A. 7160

R.A. 9184, under Section 76 thereof, provides that it "amends Title Six, Book Two, of Republic Act No. 7160, otherwise known as the 'Local Government Code of 1991.'" This covers Sections 355-383 of the said law. Section 75 of IRR-A of R.A. 9184, on the other hand, provides that the provisions on Chapter 5, Title I, Book I of R.A. 7160, specifically Sections 37 and 38, are repealed thereby.

Inasmuch as the above-mentioned Sections of R.A. 7160 were expressly repealed by either by R.A. 9184 or its IRR-A, we are of the opinion that Section 444(b)(vi) of R.A. 7160 was neither expressly nor impliedly repealed by R.A. 9184 and its IRR-A. However, our view on the matter notwithstanding, we have referred the matter for the proper interpretation and consideration of the Department of Interior and Local Government.

## Posting Requirement

Section 21.2.1 of IRR-A of R.A. 9184 specifically provides for the following modes of advertising or posting:

Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

- a) Advertised at least twice within a maximum period of fourteen (14) calendar days, with a minimum period of six (6) calendar days in between publications, in a newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the website of the procuring entity concerned, **if available**, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the G-EPS during the maximum period of fourteen (14) calendar days stated above; and
- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned. (Emphasis supplied)

Based on the above-quoted provision, in the event that the procuring entity has no available website, it is excused from complying with such requirement. However, the other modes of posting or advertisement should be complied with, i.e., (a) advertisement in a newspaper, if required, (b) the G-EPS, and (c) any conspicuous place reserved for the purpose in the premises of the procuring entity.

In view of the foregoing, posting at any conspicuous place reserved for the purpose in the premises of the procuring entity alone does not satisfy the posting and advertising requirements provided under Sections 21.2.1 and 21.2.3 of the IRR-A of R.A. 9184.

## Maximum Allowable Amount for Shopping

Each acquisition of goods, infrastructure projects, and consulting services has to have an approved budget for the contract before the procurement therefor is commenced. This rule applies to all methods of procurement, i.e., public bidding or any of the alternative methods stated under Article XVI of R.A. 9184 and its IRR-A. Therefore, each procurement project is based on the approved budget allocated for its acquisition.

As such, the amounts mentioned under Section 52 of the IRR-A of R.A. 9184 should be considered as the maximum amount per procurement project. Section 52 specifically provides, to wit:

Shopping is a method of procurement of goods whereby the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed only in any of the following cases:

- a) When there is an unforeseen contingency requiring immediate purchase: *Provided, however,* That the amount shall not exceed fifty thousand pesos (P50,000); or
- b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding two hundred fifty thousand pesos (P250,000): *Provided, however,* That the procurement does not result in splitting of contracts, as provided in Section 54.1 of this IRR-A: *Provided, further,* That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

The maximum allowable amount of procurement by shopping when there is an unforeseen contingency is P50,000.00. This means that for the unforeseen contingency requiring the immediate purchase of particular goods, the amount for its acquisition should not exceed P50,000.00. Should another immediate purchase be required due to another unforeseen contingency, the procurement of such goods may still be acquired through shopping, subject to the same limitation that it should not exceed P50,000.00. In the same manner, the procurement of office supplies and equipment not available in the Procurement Service ("PS") is on a per project basis such that each supply or equipment needed by a procuring entity that is not available in the PS may be procured through shopping subject to the limit of P250,000.00.

## Cost/Rate of Bidding Documents

Section 17.5 of the IRR-A does not prescribe a standard fee or rate for the payment of bidding documents by prospective bidders. However, such fees should not be unconscionable, or should be fair enough to recover the cost of its preparation and development. Section 17.5 provides as follows:

Prospective bidders shall be given ample time to examine the bidding documents and to prepare their respective bids. To provide ample time, the concerned BAC shall promptly issue the bidding documents for the contract to be bid at the time the Invitation to Apply for Eligibility and to Bid is first advertised. **Bidders may be asked to pay for the bidding documents to recover the cost of its preparation and development.** The BAC shall issue the bidding documents upon payment of the corresponding cost thereof to the collecting/disbursing officer of the procuring entity concerned. (Emphasis supplied)

In this regard, considering that the procuring entity has the discretion to charge for acquiring copies of the bidding documents or to make them available to prospective bidders, a procuring entity may opt to prescribe the fees thru a Sangguniang Bayan ordinance.

## Honoraria for BAC Members

The guidelines for the grant of honoraria to Bids and Awards Committee ("BAC") members, the Technical Working Group, and the BAC Secretariat was issued by the Department of Budget and Management through Budget Circular No. 2004-5, dated March 23, 2004. This includes the funding source from which the honoraria may be charged. Section 5.0 thereof provides as follows:

Agencies may retain fifty percent (50%) of their collections from:

- Sale of bid documents;
- Fees from contractor/supplier registry;
- Fees charged for copies of minutes of bid openings, BAC resolutions and other BAC documents;
- Protest fees;
- Liquidated damages; and
- Proceeds from bid/performance security forfeiture.

We trust that this clarifies matters.

Very truly yours,

  
JOSE MARTIN C. SYQUIA  
Executive Director

RESPONSE SHEET 1 R PHONE OPINIONS

PhO No. 003-2004

Date Received/Date Called: Feb. 24, 2004

Requesting Agency: Bayan ng San Jose, Office of the City Engineer

Contact Person: Mansueto D. Glagan

Issues/Requests: ① Is Sec. 444 (b) (vi) of R.A. 7160 which states "Upon authorization by the Sangguniang Bayan, the LCE represents the municipality in all its business transactions, & sign on its behalf all bond contracts, and obligations, and such other docs. made pursuant to law or ordinance", repealed by R.A. 9184?

② Posting at any conspicuous place reserved for the purpose sufficient to satisfy 21.2.3 & 21.2.4 if website is not available?

③ Is the max amt of 50,000 & 250,000 stated in Sec. 52(a) & (b) applicable for a pt of 1 mo, 1 yr, or per transaction?

④ Is the cost/rate of bidding documents per last sentence of §17.5 of R.A. 9184 subj. to Sangguniang Bayan ordinance?

⑤ Where shall we change the honoraria stated in §15? Is it also subj. to legal limitations of an LGU?

Response: ① No. Although, we are of the opinion that sec 444(b)(vi) of RA 7160 has not been repealed by RA 9184 since it is expressly provided under section 75 of IRRA that only (Secs 27 & 30) Chapter I, Title I, Book I, and (Secs 315-323) Title 6, Book II of RA 7160 are repealed by RA 9184, we have referred the proper interpretation of the said provision to DILG.

② No.

a) Sec 21.23 of the IRRA provides four (4) posting requirements:  
 - Website of the procuring entity concerned, if available  
 - website of the procuring entity's service provider, if any, as provided in sec 2 of the IRRA  
 - the G-EPSS  
 - at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned.

b) Sec 21.2.4 of the IRRA provides four (4) posting rights:  
 - advertisement in a newspaper  
 - website of the procuring entity concerned, if available  
 - the G-EPSS  
 - posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned.

Remarks: letter requested

Assigned to: Gen

Date assigned: March 12, 2004

