



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
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Pasig City, Philippines 1605

NPM No. 040-2005

September 22, 2005

MS. MA. FRECELYN P. MEJIA-HAW
City Legal Officer
BAC Member
City of Tacurong
Province of Sultan Kudarat

Re : BAC Recommendation in the Procurement Process

Dear Ms. Mejia-Haw:

This is with reference to your letter, dated 19 August 2005, requesting clarification on some of the provisions of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A). The substantive issues for resolution, as hereunder reproduced verbatim from the letter, are as follows:

1. Whether or not the Bids and Awards Committee's (BAC's) action and/or recommendation is necessary in all procurement transactions of government agencies; and
2. Whether or not procurement activities undertaken without public bidding and/or prior recommendation of the BAC is considered an automatic violation of R.A. 9184 and its IRR-A.

BAC Participation in the Procurement Process

The recommendation of the BAC to the Head of the Procuring Entity is an indispensable requirement before a procurement contract may be perfected with any winning and/or eligible supplier, contractor or consultant. Witness Section 12 of R.A. 9184, to wit:

SEC. 12. *Functions of the BAC.* - The BAC 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 x x x.

In proper cases, the BAC shall also *recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement* as provided for in Article XVI hereof.¹

Corollary to the foregoing, the BAC's involvement in all types of procurement, whether conducted through public bidding or through any of the alternative modes of procurement, is necessary. The law requires that preliminary to any award of contract by the Head of the Procuring Entity, the BAC should make a recommendation to this effect. And in the case of resort to any of the alternative modes of procurement, a prior recommendation of the BAC is similarly required.

BAC Recommendation in Procurement through Shopping

The foregoing notwithstanding, special focus is placed in the case of procurement through Shopping. By this method, the purchaser simply requests the submission of price quotations for the items to be procured directly from manufacturers, suppliers or distributors of known qualifications. This alternative procurement method contemplates, in one of two situations mentioned in the law, a case where immediate purchase is justified by the occurrence of an unforeseen contingency.²


However, by the fact of immediate purchase, issue arises as to the need and/or practicability of a prior recommendation by the BAC and approval of the Head of the Procuring Entity. The authority to immediately purchase, it may seem, runs incongruent to the requirement for prior recommendation and approval as stated above because of the time involved in the latter.

On this note, this office opines that, in order to satisfy the requirement for prior recommendation and approval, the BAC and the Head of the Procuring Entity shall commit at the outset the recommendation and approval, respectively, of the resort to any of the alternative methods of procurement, by way of a general statement in the Annual Procurement Plan (APP) which shall be reinforced by a BAC Resolution.³ The general recommendation and approval shall contemplate the occurrence of an unforeseen contingency which will justify, in accordance with the intention of Sec. 52 (a) of the IRR-A of RA 9184, the immediate purchase of goods. The same shall also identify a pre-determined item or class of items which may be purchased by shopping

¹ Italics supplied.

² See Section 52 (a) of the IRR-A of RA 9184.

³ A BAC Resolution issued subsequent to the preparation of the APP affording the requisite recommendation for use of any of the alternative methods of procurement may contain specific items to be purchased through Shopping under Sec. 52 (a) of the IRR-A if the same were not sufficiently embraced within the original tenor of the general statement made in the APP or the prior specification of items therein, subject to the conditions of contingency as prescribed in the IRR-A and mentioned in the APP. It is well to note that inasmuch as the APP may be adjusted as often as the procuring entity deems it necessary, on every occasion of adjustment, the same shall consider those contemplated in BAC Resolutions to be purchased through Shopping as clarified in the foregoing.



under the said provision of the rules. The general recommendation and approval shall be without prejudice to the amount limits established by the rules.

Moreover, it is understood that resort to alternative method of procurement of Shopping under Sec. 52 (a) of the IRR-A is to be undertaken only in case where there is no material time to procure the needed items thru the usual public bidding and when the requisite prior recommendation and approval cannot be ordinarily obtained prior to actual purchase. It is for this reason that in this kind of Shopping, the prior recommendation and approval must have already been considered at the outset during the procurement planning period.

It may be well to mention that additional measures are in place to guard this procedure against abuse. An emergency purchase, in the context of this kind of Shopping, shall be supported by a certification by the agency head or his representative as to the necessity/justification for said purchase, and as to the reasonableness of the price paid or contracted for, it being the lowest obtainable at the time of the purchase or order.⁴

In fine, as regards the issue on payment, the same may not be properly passed upon by this office as it does not involve the interpretation of any of the provisions of the law it is mandated to implement or administer. Except for guidance on what legal procedure may be followed in procurement undertakings—which can only be prospective, this office is without authority to opine on what proper ways should be adopted by procuring entity anent the propriety of payment—the issue of payment being strictly contractual in character and is to be determined and, perhaps, enforceable under general provisions of law on contracts.

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

⁴ COA Circular No. 78-84, August 1, 1978