

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 41-2004

March 29, 2004

MR. OSCAR R. ROCHA

Vice Mayor
City of Tabaco
Province of Albay

**Re: Request for Deferment of the Implementation of R.A. 9184 and its
IRR-A and Queries on R.A. 9184 and its IRR-A**

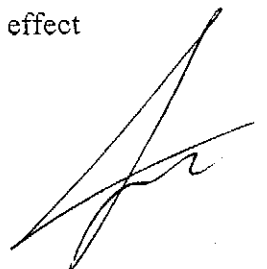
Dear Mr. Rocha:

This refers to your letter addressed to Director Rebecca Olayan, DBM Region V, dated January 26, 2004 which was referred to us for appropriate action on February 23, 2004, wherein your office requested for a grace period of three months for deferment of the implementation of Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part - A (IRR-A). Your office also raised concerns regarding the procurement of common use goods and supplies from the Department of Budget and Management - Procurement Service ("DBM-PS"), particularly on the following matters:

1. The minimum required purchase;
2. Delivery and freight expense;
3. Unavailability of goods in the DBM-PS;
4. Registry of Suppliers and Manufacturers; and
5. Entities allowed to procure from DBM-PS.

Applicability of R.A. 9184 and its IRR-A

R.A. 9184 was signed into law by President Gloria Macapagal-Arroyo on January 10, 2003, and was published the following day or on January 11, 2003, in two (2) newspapers of general circulation, namely, Manila Times and Malaya. Subsequently, R.A. 9184 took effect on January 26, 2003 pursuant to Section 78 thereof, to wit:



Effectivity Clause - This Act shall take effect fifteen (15) days following its publication in the Official Gazette or in two (2) newspapers of general circulation.

In order to fully implement R.A. 9184, its IRR-A was approved by the President through Memorandum Order No. 119 and took effect on October 8, 2003.

In view of the foregoing, we are of the opinion that the request of the City of Tabaco for a grace period of three (3) months for the deferment of the implementation of R.A. 9184 and its IRR-A cannot be acted upon by the Government Procurement Policy Board ("GPPB"), since the law itself provides for its effectivity subject to no exceptions. The law does not provide that it can be suspended upon the happening of future specified contingencies, acts or conditions, nor does it give the GPPB or any government agency the power to ascertain the existence thereof as the basis of taking into effect or suspending the law.

Accordingly, Resolution No. 025-2004 dated January 26, 2004 of the City Council of Tabaco which was referred to our office on March 11, 2004, requesting Her Excellency Gloria Macapagal-Arroyo, President of the Philippines through Hon. Emilia T. Boncodin, Secretary of the Department of Budget and Management, to suspend the implementation on R.A. 9184 has no legal basis and cannot be acted upon by the GPPB based on the foregoing discussions.

While we understand the difficulties that your city is presently experiencing in adjusting to the reforms institutionalized by the new procurement law, which would sometimes derail your projects, the GPPB cannot act beyond the statutory limits of its conferred authority just to accommodate convenience and practicality. It must not be forgotten that R.A. 9184 and its IRR-A were purposely enacted to modernize, standardize and regulate the procurement activities of the government under the declared policy of the State to promote the ideals of good governance in all its branches, departments, agencies, subdivisions and instrumentalities. Hence, no valid justification can be made to defer its application.

Minimum Amount of Purchase

With the enactment of R.A. 9184 and its IRR-A, all procuring entities, including local government units, are now required to procure their common use supplies from the DBM-PS. This can be inferred from Section 52 of the IRR-A of R.A. 9184, 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 or ordinary/regular equipment to be procured directly from the suppliers of known qualifications. This method of procurement shall be employed only in any of the following cases:

- a) x x x x

- 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. (Emphasis supplied)

Furthermore, Section 54.2 (g) of the IRR-A of R.A 9184 explicitly provides:

With respect to item (e) of Section 53 of the Act and its IRR-A, a direct negotiation may be made with the Government agency concerned: Provided however, **That the procurement of common use goods and supplies shall be undertaken through the DBM-PS.** (Emphasis supplied)

It must be noted however, that the above-quoted provisions are silent as to the minimum amount of common use supplies that should be procured from the DBM - PS. Thus, all procuring entities are required to procure common use goods or supplies from the DBM-PS regardless of amount since R.A. 9184 and its IRR-A does not provide for any required minimum purchase.

Delivery and Freight Expense

For the information of your office, the DBM - PS delivers goods procured by government agencies therefrom free of charge within Metro Manila. However, outside Metro Manila, the procuring entity concerned has two options: First, the procuring entity may request the DBM-PS to procure freight service for the delivery of the goods, in which case the latter shall include the cost of the freight service to the cost of the goods procured. Second, the procuring entity may directly procure freight service for the delivery of the goods and shall be responsible for the payment of the same.

Procurement of Common Use Supplies Not Available in DBM-PS

In case the ordinary or regular office supplies and equipment are not available in the DBM - PS, the procuring entity may obtain these items through the alternative method of procurement known as shopping under Section 52(b) of the IRR-A of R.A. 9184 afore-quoted. This is done by simply requesting for the submission of price quotations directly from the suppliers of known qualifications, provided that the amount thereof does not exceed Two Hundred Fifty Thousand Pesos (P250,000). Otherwise, if it exceeds such amount, the procuring entity must conduct public bidding as provided by Section 10 of R.A. 9184 to procure such items.

Shopping as an alternative method of procurement does not need the approval of the Government Procurement Policy Board ("GPPB"). However, it should be approved by the head of the procuring entity concerned upon the recommendation of the Bids and Awards Committee ("BAC").

Registry of Manufacturers, Suppliers, Distributors, Contractors and Consultants

To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures in the government. Accordingly, the Government Electronic Procurement System ("G-EPS") has been established to serve as the primary source of information on all government procurement opportunities.

In this connection, the G-EPS shall maintain a centralized electronic database of all manufacturers, suppliers, distributors, contractors and consultants. Thus, manufacturers, suppliers, distributors and consultants interested in participating in government procurement are mandated to register with the G-EPS. Section 8.5.1 of IRR-A of R.A. 9184, provides that:

Manufacturers, suppliers, distributors, contractors and/or consultants shall register with the G-EPS. x x x x

However, in cases of emergency when there is unforeseen contingency which requires immediate purchase of goods procuring entities are allowed to resort to shopping as an alternative method of procurement under Section 52(a) of the IRR-A of R.A. 9184, which provides:

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 or ordinary/regular equipment to be procured directly from the suppliers of known qualifications. This method of procurement shall be employed only in any of the following cases:

- a) **When there is unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed fifty thousand pesos (P50,000); or**
- b) x x x x (Emphasis supplied)

In this type of alternative method of procurement, we are of the opinion that the procuring entity may procure from non-registered suppliers or contractors since the procurement calls for an immediate action on the part of the procurement entity.

Entities that may procure from the Procurement Service

The DBM - PS was established by Letter of Instruction No. 755 ("LOI 755") on October 18, 1978 to implement the integrated procurement system for supplies, materials and other items needed by the government. As such, the DBM -PS caters only to the need of government agencies and instrumentalities, not private entities, in terms of procurement of common use supplies and equipment. Thus, private individuals are not allowed to purchase goods from the DBM - PS.

With the foregoing elucidations, we trust that our opinion has provided the City of Tabaco, Albay with needed information relevant to its procurement concerns.

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.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

Copy Furnished:

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pia/hpm