

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 045-2004

April 6, 2004

MR. ROMEO O. ANG
Administrative Assistant
BAC Member
Municipality of Pantukan
Province of Compostela Valley

Re: Use of Shopping as an Alternative Method of Procurement and Splitting of Contracts

Dear Mr. Ang:

This refers to your letters dated February 16 and 23, 2004, requesting for clarification and guidance on the interpretation of certain provisions of Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A"). In your letter you raised a lot of concerns regarding your Municipality's resort to Shopping as an alternative method of procurement of goods. However, we have observed that the multifarious issues you raised in your two letters hinge on a central issue, which is:

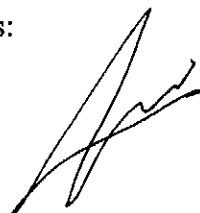
Whether or not Shopping as an alternative method of procurement may be utilized by your Municipality without violating the specific requirements of R.A. 9184 and its IRR-A on the alternative methods of procurement.

Use of Shopping as an Alternative Method of Procurement

With the enactment of R.A. 9184 and its IRR-A, it is now an established policy that all Government contracts shall be awarded through open and competitive bidding save in exceptional cases provided by law. Section 10 of R.A. 9184 is explicit:

All procurement shall be done through competitive bidding, except as provided for in Article XVI (Alternative Methods of Procurement) of this Act."

This is further amplified by Section 48. 2 of the IRR-A, which provides as follows:



In accordance with Section 10 of this IRR-A, as a general rule, the procuring entities shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. **Alternative methods shall be resorted to only in the highly exceptional cases provided for in this Rule.** (Emphasis supplied).

Based on the foregoing provisions, it is clear that R.A. 9184 and its IRR-A prescribe public bidding as the general mode that shall be used by Government agencies in the procurement of goods, services or infrastructure projects, and resort to the alternative methods of procurement is allowed only in highly exceptional cases and upon compliance with the rigid conditions set forth by law.

Consequently, Shopping as an alternative method of procurement may be availed of only in such instances specified under Section 52 of R.A. 9184 and its IRR-A, thus:

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 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)

x x x

Applying the above-mentioned provision to the factual antecedents of your case, it appears that the BAC of the Municipality of Pantukan erred when it resolved "to adopt Section 52.b. of the IRR-A of R.A. 9184 as the mode of procurement for other goods and small infrastructure projects" considering that based on your representations, it appears that the justification for such alternative method is due only to time pressure brought about by the impending prohibition on award of Government contracts during the election period, which certainly does not fall under the specified ground provided by Section 52.b of the IRR-A of R.A. 9184. It must be noted also that Shopping as an alternative method is applicable only to procurement of goods and not to infrastructure projects. It can be observed that under the IRR-A of R.A. 9184, the only alternative method of procurement that may be availed of for infrastructure projects is Negotiated Procurement as provided by Section 53 thereof.

Furthermore, the fact that the Procurement Service ("PS") depot within your locality is still undergoing construction is not a valid reason for your Municipality to resort to Shopping in the procurement of common-use goods. It must not be forgotten that all government agencies nationwide, regardless of location, are required to procure common use supplies from the PS as mandated by Letter of Instruction No. 755 and Executive Order Nos. 285 and 359, which was amplified by the pertinent provisions of the R.A. 9184 and its IRR-A. Thus, even in the absence of a PS regional depot in your area, common-use goods must still be obtained from the main warehouse of the PS. However, if there is an unforeseen contingency requiring immediate purchase of readily available off-the-shelf goods or ordinary/regular equipment, your Municipality may resort to Shopping for the procurement of such goods not exceeding Fifty Thousand Pesos (P50,000.00), pursuant to Section 52.a. of the IRR-A of R.A. 9184

The Annual Procurement Plan ("APP") vis-à-vis Shopping as an Alternative Method of Procurement

All procurement, whether through competitive bidding or the alternative methods, should be in accordance with the APP. Consequently, Procuring Entities are not allowed to procure anything unless it is included in the APP. Section 7.1 of the IRR-A specifically provides:

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").** In the case of projects funded from lump-sum appropriations, the head of the procuring entity shall immediately update the APP to include such projects or contracts. x x x (Emphasis supplied)

As a rule also, the APP itself should include a recommendation to the Head of the Procuring Entity on the use of alternative methods of procurement such as Shopping. However, if the original mode of procurement recommended in the APP was Competitive Bidding, the BAC shall recommend the change in the mode of procurement from Competitive Bidding to Shopping through a Resolution to be approved by the Head of the Procuring Entity. Furthermore, if the items to be procured are not included in the APP, updating of the individual PPMPs and the consolidated APP must be undertaken to comply with Sections 7.1 - 7.5 of the IRR-A of R.A. 9184.

In other words, Shopping as an alternative method under the specific grounds stated in Section 52 of R.A. 9184 may be availed of by an agency even if such mode is not mentioned in the original APP as the means of obtaining the items to be procured stated therein, as long as such is approved by the Head of the Procuring Entity upon recommendation of the BAC.

Splitting of Government Contracts

Under Section 52.b. of the IRR-A, Shopping may be utilized as an alternative method of procurement, in case the ordinary or regular office supplies and equipment needed by a

Procuring Entity are not available in the PS, provided the following conditions are met: (1) the amount does not exceed P250,000.00; (2) price quotations from at least three suppliers in good standing are obtained; and (3) **there is no splitting of contracts.**

Splitting of contracts is absolutely prohibited and frowned upon by law such that Section 65 of R.A. 9184 now imposes criminal liability to those public officers found guilty of such act. The concept of "Splitting of Government Contracts" has a specialized meaning in the IRR-A and describes it as a means of circumventing the existing procurement laws to the detriment of the government, which may be committed in all types of procurement, be it for goods, consulting services or infrastructure projects. Section 54.1 of the IRR-A defines such act as follows:

Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts for the purpose of evading or circumventing the requirements of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement. (Emphasis supplied).

In sum, there is Splitting of Government Contracts if a particular contract to be awarded by an agency is divided into separate parts for the purpose of subverting the law. Thus, the indicia of contract splitting under the IRR-A depends upon the purpose for which the contract is divided. If the purpose for the division of the contract into artificial phases or subcontracts is to circumvent or evade the mandatory requirements of R.A. 9184 and its IRR-A, then the public officers responsible for such is guilty of contract splitting. Accordingly, if the goods to be procured by your Municipality through Shopping under Section 52.b, assuming that valid grounds for such exist, is covered by separate contracts when it may be lumped into a single contract and the very reason why such contract is divided is to make it appear that it is within the P250,000.00 maximum limit, which has the effect of circumventing the provisions of R.A. 9184 and its IRR-A, then there is Splitting of Government Contracts.

With the foregoing elucidations, we trust that your queries have been sufficiently addressed. Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director