

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

NPM No. 053-2004

April 20, 2004

MR. VINCENT V. VILLALUNA

Mayor
Municipality of Bagamanoc
Province of Catanduanes

Re : Request for Deferment of the Implementation of Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A")

Dear Mr. Villaluna:

This refers to your letter dated March 16, 2004, addressed to Secretary Emilia T. Boncodin of Department of Budget and Management, as Chairperson of the Government Procurement Policy Board ("GPPB"), which was referred to us for appropriate action on April 15, 2004, wherein your office requested for deferment of the implementation of R.A. 9184 and its IRR-A in your municipality.

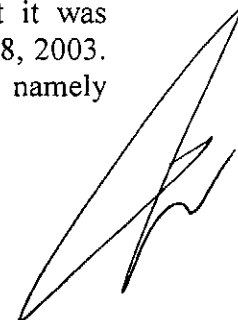
Applicability of R.A. 9184 and its IRR-A

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, we wish to inform your office that the IRR-A of R.A. 9184 was finalized by the Government Procurement Policy Board ("GPPB") and the Joint Congressional Oversight Committee ("JCOC") on July 11, 2003, and that it was approved by the President through Memorandum Order No. 119, dated September 18, 2003. Having been published in two (2) newspapers of general nationwide circulation, namely

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Manila Times and Malaya, on September 23, 2003, the IRR-A became effective on **October 8, 2003**, in accordance with Section 78 of the said IRR-A.

Hence, after the law was put into operation by its IRR-A on October 8, 2003, all government agencies, including local government units, are now governed by a general, uniform and standard procurement law, with its implementing rules and regulations.

Effectivity of the Provisions of R.A. 9184 and its IRR-A, Not Determined by Contingencies

Although the GPPB acts as an agent of the legislature insofar as it is authorized to promulgate rules and regulations in the exercise of its quasi-legislative functions or rule-making power, as sanctioned by Section 63 of R.A. 9184, such authority is limited only to *supplementary or detailed*¹ and *interpretative legislations*.² R.A. 9184 did not grant the GPPB the quasi-legislative authority of *contingent legislation* or the power to determine some facts or state of things upon which the enforcement of law depends. In other words, the GPPB is bereft of a legislative delegated authority to determine within its discretion or "to ascertain, under and pursuant to law, some circumstances on which the law by its own terms, makes its own action depend, or to find the facts or conditions properly prescribed under which a law as passed will or will not operate, that is, for putting in effect, applying or suspending a law."³

Furthermore, Congress did not provide that R.A. 9184 and its IRR-A shall take effect or be suspended upon and/or until the happening of future specified contingencies, acts or conditions, such as the construction or improvement of the transportation and communication system in Municipality of Bagamanoc to attract prospective bidders in participating in the procurement activities of the Municipality, nor does it allow other administrative agencies to ascertain the existence thereof as the basis of taking into effect or suspending the law.

Based on the foregoing, we regret to inform you that the GPPB has no power to grant such request of deferring the implementation of any of the provisions of R.A. 9184 and its IRR-A. While we understand the difficulties that your municipality are presently experiencing in adjusting to the reforms institutionalized by our new procurement law, which at times, derail your projects, we cannot act beyond the statutory limits of our conferred authority just to accommodate convenience and practicality. The GPPB as an agent of the legislature is limited to the jurisdiction and powers expressly granted to it or necessarily implied from the provisions of R.A. 9184, which created such body.⁴ It must strictly perform its legal mandate through sound policy formulation within the limits of its delegated quasi-legislative authority, and enforce the mandatory provisions of R.A. 9184 and its IRR-A.

¹ Supplementary or detailed legislation pertains to rules promulgated by an administrative body which is intended to fill in the details of the law and "to make explicit what is only general." Its purpose is to enlarge upon a statute, subject only to the standards fixed therein, to ensure its effective enforcement in accordance with the legislative will. (See Cruz, *Philippine Administrative Law*, 1998 Ed., p. 33)

² Interpretative legislation is also known as rule-making by the construction and interpretation of a statute being administered and is intended to interpret a particular law being enforced. (See De Leon and De Leon, Jr., *Administrative Law: Text and Cases*, 2001 Ed., p. 81) .

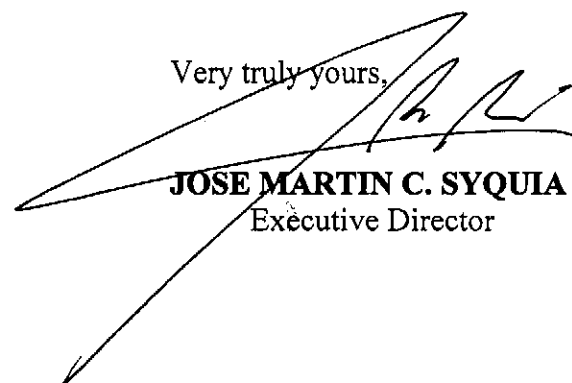
³ Cruz, *Philippine Administrative Law*, 1998 Ed. pp. 33-34 citing 73 *CJS Public Administrative Bodies*, Sec.31.

⁴ RCPI v. NTC, 215 SCRA 455.

Moreover, it must not be forgotten that though the changes being introduced by R.A. 9184 and its IRR-A in the procurement process would sometimes affect and delay the present projects being undertaken by procuring entities due to the complexity and technical nature, as well as the magnitude of the reforms in the procurement rules and procedures being introduced by law, such sacrifices must be made in view of a greater benefit; that of transforming our dysfunctional public procurement system into one that promotes transparency, competitiveness, economy and accountability.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director