

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
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NPM No. 055-2004

April 21, 2004

ATTY. DOMINADOR D. BUHAIN
President
Philippine Educational Publishers' Association
84 P. Florentino St., Sta. Mesa Heights,
Quezon City

Re : Request for Clarification on Section 7.3 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184")

Dear Atty. Buhain:

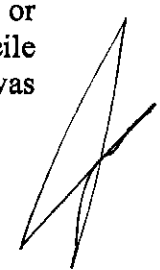
This refers to your position paper, dated January 27, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board, interposing objection on Section 7.3 of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act 9184 ("R.A. 9184"), specifically, the last sentence thereof which refers to the procurement of textbooks for general use.

Your objection on Section 7.3 of the IRR-A of R.A. 9184 is centered on the argument that it contravenes the provisions of the Republic Act 8293 ("R.A. 8293"), otherwise known as the "Intellectual Property Code of the Philippines" and Republic Act 8047 ("R.A. 8047"), also known as the "Book Publishing Industry Development Act." Hence, the sole issue to be resolved is as follows:

Whether or not Section 7.3 of the IRR-A of R.A. 9184 contravenes the provisions of R.A. 8293 and R.A. 8047.

Section 7.3 of the IRR-A Harmonized and Reconciled with R.A. 8293 and R.A. 8047

The basic rule in statutory construction in case of conflicts between statutes, or statutes and implementing rules and regulations for this matter, is to harmonize and reconcile the provisions therein so that each shall be effective. Undoubtedly, each provision was



inserted for a definite reason. Often by considering what appears to be on its face a conflict may be cleared up and the provisions reconciled.¹ In this regard, Section 7.3 of the IRR-A of R.A. 9184 should be reconciled with the provisions of R.A. 8047 and R.A. 8293 in the event a conflict is believed to exist.

Section 7, Rule II of the IRR-A of R.A. 9184 provides for the rules on the preparation and development of the Annual Procurement Plan ("APP") and the Project Procurement Management Plan ("PPMP") by procuring entities. The provisions under Section 7 serves as a guide to procuring entities on the types of information that should be included in the APP and PPMP. Section 7.3, in particular, states the information composing the PPMP and the components of a contract for the procurement of textbooks for general use, to wit:

The PPMP shall include: a) the type of contract to be employed; b) the extent/size of contract scopes/packages; c) the procurement methods to be adopted, and indicating if the procurement tasks are to be outsourced as provided in Section 53(e) of this IRR-A; d) the time schedule for each procurement activity; and e) the estimated budget for the general components of the contract e.g., civil works, goods and consulting services. The APP shall include provisions for foreseeable emergencies based on historical records. In the case of textbooks for general use, **the packaging of the contract shall be divided into two components: a) development of the manuscript; and b) printing of the textbooks.** (Emphasis supplied)

The last sentence of the above-quoted provision provides for the manner by which a contract for the procurement of textbooks for general use may be divided, *i.e.*, (a) contract package for the development of the manuscript; and (b) contract package for the printing of the textbooks. A careful reading of this provision will clearly lead to the conclusion that it merely pertains to the manner the PPMP and the APP presents a contract for procurement of textbooks for general use in the APP and the PPMP. Once presented in the APP, the procuring entity may then bid out a contract for the development of the manuscript of textbooks for general use. The contract for the printing of the textbooks, now a separate component, is bid out thereafter.

The Department of Education ("DepEd") is still confined to the functions provided under R.A. 8047, *i.e.*, preparation of the minimum learning competencies, testing, evaluation, selection and approval of the manuscripts. By way of analogy, these functions may be said to be exercised by DepEd in bidding for the development of the manuscripts. The minimum learning competencies are the technical specifications provided for in the bidding documents as well as the testing and evaluation. The bidding itself is the process of selection and the award of the contract for the development of the manuscript may be equated to approval. The rights of authors and publishers as provided under R.A. 8293 are not encroached upon because Section 7.3 of the IRR-A does not allow or authorize procuring entities to interfere or participate in the development of a manuscript. It only provides procuring entities with the obligation to divide the contract for the procurement of textbooks for general use into two components and bid them out separately.

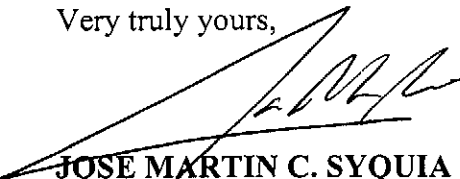
In view of the foregoing, it is apparent that Section 7.3 of the IRR-A of R.A. 9184 does not contravene the provisions of R.A. 8293 and R.A. 8047, nor does it conflict with any

¹ Samson S. Alcantara, *Statutes*, 1997 Ed., p. 171.

of the provisions of the above mentioned statutes. The conflict inevitably arises only when Section 7.3 of the IRR-A of R.A. 9184 interpreted without harmonizing and reconciling with R.A. 8293 and R.A. 8047.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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