

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. 059-2004

May 4, 2004

Atty. JASON A. AMANTE
Chairman, Bids and Awards Committee
City of Marikina
Sta Elena, Marikina City, Metro Manila

Re : **Resolution No. 01-2004 of the Bids and Awards Committee of the City of Marikina Recommending the Amendment of Section 52(b) of the Implementing Rules and Regulations Part A of Republic Act No. 9184**

Dear Atty. Amante:

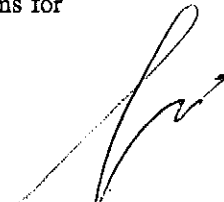
This refers to your letter addressed to Secretary Emilia T. Boncodin of the Department of Budget and Management, which was referred to our office on March 10, 2004, endorsing Resolution No. 01-2004 of the Bids and Awards Committee ("BAC") of the City of Marikina.

In said Resolution, it is requested that the Government Procurement Policy Board ("GPPB") amend Section 52(b) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"), so that "Shopping" as an alternative method of procurement of goods not exceeding Two Hundred Fifty Thousand Pesos (P250,000) may be availed of not only in the procurement of ordinary or regular office supplies and equipment not available in the Procurement Service, but for other items as well.

Rule Making Power of the GPPB

The IRR-A of R.A. 9184 was promulgated by the GPPB jointly with the Joint Congressional Oversight Committee, pursuant to a delegated authority under Sections 63 and 75 of R.A. 9184¹. Furthermore, the GPPB is given the authority to amend, whenever

¹ SEC. 75. *Implementing Rules and Regulations and Standard Forms.* – Within sixty(60) days from the promulgation of this Act, the necessary rules and regulations for the proper implementation of its provisions shall be formulated by the GPPB, jointly with the members of the Oversight Committee created under Section 74 hereof. The said rules and regulations shall be approved by the President of the Philippines. For a period not later than thirty (30) days upon the approval of the implementing rules and regulations, the standard forms for Procurement shall be formulated and approved.



necessary such implementing rules and regulations. It must not be forgotten, however, that while the GPPB is imbued with quasi-legislative or rule-making power, such power must be confined only to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. It is axiomatic that the delegate, in exercising the power to promulgate and amend implementing regulations, cannot contradict the law. The Supreme Court has consistently ruled that administrative regulations under legislative authority by a particular department must be in harmony with the provision of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulation, of course, the law itself cannot be extended. An administrative agency cannot amend an act of Congress.²

In view of the foregoing, we regret to inform you that the request of the BAC of the City of Marikina through Resolution No. 1 series of 2004 cannot be acted upon by the GPPB as it is beyond its conferred quasi-legislative authority. It must be noted that the specific instances when a procuring entity may avail of Shopping as an alternative method of procurement is explicitly set forth in Section 52 of R.A. 9184, which is only reiterated and amplified in Section 52 of its IRR-A. Consequently, the GPPB cannot introduce amendments to Section 52 (b) of the IRR-A as requested, since it would in effect modify and expand the statutory basis of such provision. Furthermore, Section 52 of R.A. 9184 clearly limits the rule making power of the GPPB vis-à-vis Shopping as an alternative method of procurement, to wit:

SEC. 52. *Shopping.* – Shopping may be resorted to under any of the following instances:

- 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 the Procurement does not result in Splitting of Contracts: *Provided, further,* That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the GPPB. For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons. (Emphasis supplied)

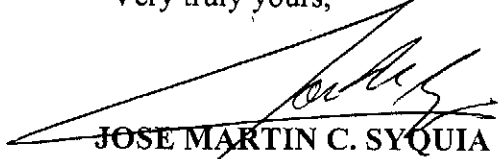
Evidently, R.A. 9184 only authorizes the GPPB to increase or decrease the benchmark amounts of P50,000, in case of unforeseen contingency requiring immediate

² People vs. Maceren, 79 SCRA 450 [1977]; Santos v. Estenzo, 109 Phil. 419, 422; Teoxon v. Members of the Board of Administrators, L25619, June 30, 1970, 33 SCRA 585; Manuel v. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao v. Casteel, L-21906, August 29, 1969, 29 SCRA 350.

purchase, and P250,000, in case of procurement of ordinary or regular office supplies and equipment not available in the Procurement Service, wherein Shopping may be availed of.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director