



REGISTRY RECEIPT

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**NPM No. 60-2009**

06 November 2009

**MS. RUBY V. ABELLAR**  
*City Accountant*  
OFFICE OF THE CITY ACCOUNTANT  
City of Bago, Negros Occidental

Re : **Applicability of R.A. 9184**

Dear Ms. Abellar:

We respond to your letter dated 07 October 2009 reiterating your previous query seeking clarification on some matters relating to procurement. Specifically, you are inquiring whether the following procurement transactions are covered by the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184), to wit:

1. Video/photography documentation;
2. Entertainers/performers for special occasions; and
3. Television Coverage (with only one TV station operating province-wide).

R.A. 9184 states in clear and unequivocal terms that it shall apply to the procurement of infrastructure projects, goods and consulting services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including, government-owned and controlled corporations and local government units.<sup>1</sup>

Further, Section 5.r of the revised IRR<sup>2</sup> defines Goods, as follows:

**Goods:** Refer to all items, supplies, materials, and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, **including non-personal or contractual services**, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling,

<sup>1</sup> Section 4, R.A. 9184

<sup>2</sup> Revised IRR of R.A. 9184 took effect last 03 September 2009; copy may be downloaded from the GPPB website: [www.gppb.gov.ph](http://www.gppb.gov.ph)

janitorial, security and **related or analogous services**, as well as procurement of materials and supplies provided by the procuring entity for such entities. The term "**related**" or "**analogous**" services shall include, but not be limited to, lease or purchase of office space, **media advertisements**, health maintenance services, and **other services essential to the operation of the procuring entity.** (*Emphasis ours.*)

A cursory perusal of the above definition of Goods lead us to opine that the procurement of video/photography documentation, entertainers/performers for special occasions, and television coverages, would fall under the phrase "non-personal or contractual services" which covers "related or analogous services". Thus, the acquisition of said services, being in the nature of goods procurement, is covered by R.A. 9184 and its IRR.

Furthermore, as mandated by law, all government contracts shall be awarded through open and public competitive bidding, as a general rule. It is only in the highly exceptional cases provided in R.A. 9184 when alternative methods of procurement may be resorted to by the procuring entity, subject to compliance with the conditions specified therein.<sup>3</sup>

Corrollarily, the determination of the mode of procurement, among other functions, is lodged primarily with the Bids and Awards Committee (BAC) of the procuring entity concerned, subject to the approval of the head of the procuring entity (HOPE).<sup>4</sup> In any event, any procurement must be included in the approved Annual Procurement Plan (APP) of the agency prior to undertaking the same.<sup>5</sup>

Thus, in relation to your query on whether a contract of service would suffice for the procurement of the subject services abovementioned, it is opined that, as a general rule, public bidding under R.A. 9184 should still be utilized, unless, in the determination by the BAC, and as approved by the HOPE, resort to any of the alternative modes, like shopping or small value procurement, is justified, and, necessary to promote efficiency and economy.

We trust that this sufficiently addresses your concerns. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

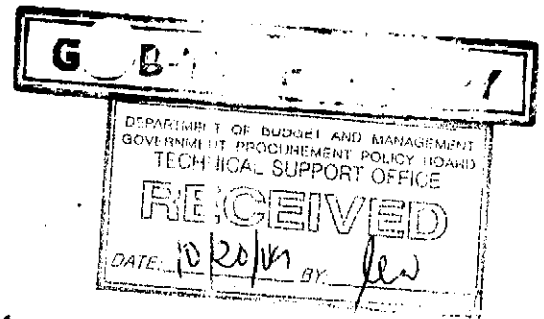
*Rubyn U. Alvarez*  
**RUBY U. ALVAREZ**  
*Executive Director III*

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<sup>3</sup> Section 48, IRR of R.A. 9184

<sup>4</sup> Section 12, IRR of R.A. 9184

<sup>5</sup> Section 48.3, IRR of R.A. 9184



Republic of the Philippines  
City of Baguio  
**OFFICE OF THE CITY ACCOUNTANT**

October 7, 2009

*Emmie,  
Let's prioritize pls.  
10/21/09*

THE CHAIRMAN  
Government Procurement Policy Board  
Unit 2506, Raffles Corporate Center  
F. Ortigas Road, Ortigas Center  
Pasig City

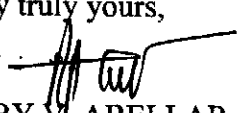
SIR:

This pertains to our earlier communication directed to your good office seeking clarification on some matters relating to procurement.

We received a reply from your office dated July 7, 2009 (copy attached) informing us on the status of our query. We hope that you may be able to furnish us with a formal opinion on the matter soon as the subject transactions are recurrent and therefore create more confusion as issues raised on them have not been resolved as yet.

Thank you for your attention and anticipated action.

Very truly yours,

  
RUBY V. ABELLAR  
City Accountant



## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

7 July 2009

**MS. RUBY V. ABELLAR**  
*City Accountant*  
**OFFICE OF CITY ACCOUNTANT**  
**CITY OF BAGO**

Dear Ma'am:

This is to acknowledge receipt by this office, on 23 June 2009, of your letter requesting for clarification on the procurement method for various equipment and entertainers/performers for special events, dated 22 June 2009.

We wish to inform you that a formal opinion will be issued by this office as soon as completed staff work shall have been undertaken on the matter.

Thank you.

Very truly yours,

  
**EMILUISA C. PEÑANO**  
*Executive Director II*

Received By: 

RUBY V. ABELLAR  
(Signature above printed name)

July 14, 2009  
(Date and Time of receipt)

\*Kindly fax to sender to acknowledge receipt



## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

14 July 2009

**MS. RUBY V. ABELLAR**

*City Accountant*

**OFFICE OF THE CITY ACCOUNTANT**

City of Bago, Negros Occidental

Philippines

Dear Ms. Abellar:

We respond to your letter dated 22 June 2009 requesting for clarification on some areas of your office procurement implementation of the rules and regulations of Republic Act No. 9184.

As represented, your office wants to inquire if the procurement of the following transactions referred to below are covered by the rules and regulations of R.A. 9184 or a mere contract of service sufficient to support the transactions stated herein.

Procurement of the following:

- a. Video/photography documentation;
- b. Entertainers/Performers for special occasions;
- c. Television Coverage (with only one TV station operating-wide)

It is now an established policy under R.A. 9184 and its IRR-A 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)

Evidently, the following procurement transactions are covered by R.A. 9184 and its IRR-A considering that the term "Goods" as defined in Section 5(k) of the IRR-A of R.A. 9184 includes services which aptly falls within the term "Goods," and should therefore be procured following the rules for the procurement of goods under the IRR-A. Section 5(k) specifically provides as follows:

*Goods.* Refer to **all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity**, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services. The term "related" or "analogous services" shall include, but not be limited to, lease or purchase of office space, media advertisements, health maintenance services, and other services essential to the operation of the procuring entity. (Emphasis supplied)

In view of the foregoing, 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 set forth in Sections 48-54 of R.A. 9184 and its IRR-A and upon compliance with the rigid conditions set forth by law.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

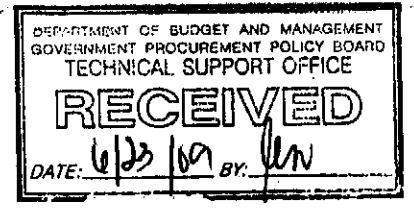
**RUBY U. ALVAREZ**  
*Executive Director III*

Handwritten notes: "the draft reply. Yes, covered by RA 9184; cite also resort to alternative modes. Exposed."



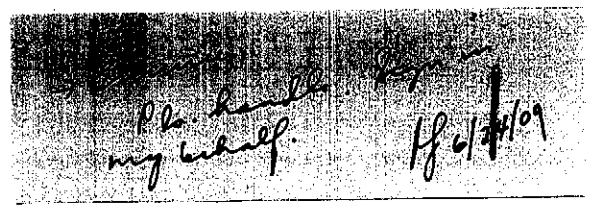
Handwritten initials: "T.Y. 6/22/09"

Republic of the Philippines  
City of Bago  
**OFFICE OF THE CITY ACCOUNTANT**



June 22, 2009

THE CHAIRMAN  
Government Procurement Policy Board  
Unit 2506, Raffles Corporate Center  
F. Ortigas Road, Ortigas Center  
Pasig City



SIR:

I respectfully pose this query to your agency so as to resolve some gray areas in our agency's implementation of the rules and regulations of R.A. 9184.

This pertains to the procurement of the following:

- a. Video/photography documentation;
- b. entertainers/performers for special;
- c. television coverage (with only one TV station operating province-wide).

May we inquire if the procurement transactions referred to in the foregoing are covered by the provisions of R.A. 9184 and should, therefore, be subject to the rules and regulations embodied therein or if a mere Contract of Service enough to support the said transactions?

We hope that you may be able to respond to this query soon so that I may apprise our City Mayor, the local Bid and Awards Committee and our Resident Auditor with your answer.

Very truly yours,  
  
RUBY V. ABELLAR  
City Accountant