

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. 70 -2004

May 17, 2004

REGISTRY RECEIPT

MR. AURELIO B. LOPEZ
Mayor
Municipality of Libona
Province of Bukidnon

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PRESERVE THIS RECEIPT FOR REFERENCE IN CASE OF INQUIRY
MAY 18 2004
NO. _____
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**Re : Queries on Republic Act No. 9184 (R.A. 9184), and its
Implementing Rules and Regulations Part A ("IRR-A")**

Dear Mr. Lopez:

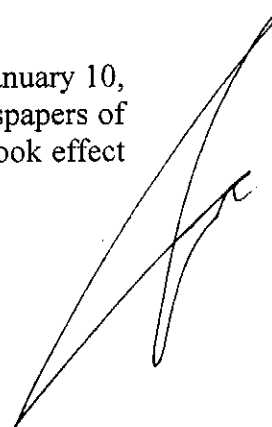
This refers to your letter dated March 16, 2004, addressed to the Regional Director of Department of Budget and Management, Region X, which was referred to us for appropriate action on April 15, 2004, seeking legal opinion on the following issues, to wit:

- 1.) Whether or not Local Government Units ("LGUs") are now mandated to comply with the provisions of R.A. 9184 and its IRR-A;
- 2.) Whether or not the policy on warranty in the IRR-A of R.A. 9184 is disadvantageous to the Government in view of the possibility for a supplier or contractor to quote a higher price for the contract in view of the ten percent (10%) retention money requirement under Section 62.1 of the IRR-A of R.A. 9184.

These issues were raised in connection with the procurement of spare parts for a heavy equipment in Municipality of Libona.

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 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 LGUs such as your agency, are now governed by a uniform and standard procurement law, and mandated to comply with the provisions of R.A. 9184 and its IRR-A.

Ten Percent (10%) Retention Money in Procurement of Goods

To protect the proprietary interest of the Government, the crafters of R.A. 9184 and its IRR-A deem it necessary to introduce an innovative provision that will provide for guaranty and immediate indemnity in case the goods or the construction works procured by Government agencies are found to be defective or of substandard quality. Accordingly, for the procurement of goods, Section 62.1 of the IRR-A of R.A. 9184 explicitly provides:

For the procurement of goods, in order to assure that manufacturing defects shall be corrected by the supplier, manufacturer or distributor, as the case may be, a warranty shall be required from the contract awardee for a minimum period of three (3) months, in the case of supplies, and one (1) year, in the case of equipment, after performance of the contract. The obligation for the warranty shall be covered by either retention money in an amount equivalent to at least ten percent (10%) of every progress payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total contract price. The said amounts shall only be released after the lapse of the warranty period: *Provided, however*, That the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met. (Underscoring supplied)

By virtue of this provision, procuring entities are now mandated to retain a part of the contract price, or require a bank guarantee from its suppliers, manufacturers or distributors in the procurement of goods. Thus, R.A. 9184 and its IRR-A contain special provisions on warranty in the procurement of goods and infrastructure projects which provide for an upfront or forward assurance that the supplier, manufacturer, or distributor warrants the goods from hidden defects and the procuring entity against eviction therefrom.

The argument that the policy on warranty under R.A. 9184 and its IRR-A is disadvantageous to the Government, considering that a supplier or contractor may possibly quote higher prices in view of the 10% retention money requirement, has been discussed and

addressed extensively. It must be noted that although the bidder-suppliers or bidder-contractors may have thought of incrementing their bid prices to hedge against miscellaneous expenses or costs that would be incurred by them, such as the 10% retention money or special bank guarantee as a form of warranty for the goods supplied, it is still the procuring entity that identifies and sets the Approved Budget for the Contract ("ABC"), in excess of which, any bid shall be disqualified. Hence, even if there is a possibility of quoting higher prices by prospective bidders as a mark-up for the warranty, the procuring entity concerned would not be put on a disadvantage as there is an upper limit or ceiling for bid prices, which is the ABC. This is in addition to the principle of "check and balance," brought about by competitive bidding itself. In other words, the requirement of setting an ABC protects the procuring entity from unwanted bidders who would usually bid for unrealistic high prices, especially if the bid price is way beyond the said ceiling as such practice will cause the unwanted bidder to be disqualified from participating in the ensuing procurement activity.

In fine, the requirement of R.A. 9184 that the ABC shall be the ceiling for bid prices induce government agencies to pay closer attention to allocating its overall budget more efficiently across projects. Thus, agencies should judiciously and meticulously make accurate budget estimates for its projects, which reflect the most approximate, reasonable and probable contract price, giving no allowance for other unidentified expenses or non-component items of the said contract of goods or infrastructure projects.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

Copy furnished:

HON. ARLYN T. NIERE
Director IV
DBM- Region X

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April 15, 2004

HON. AURELIO B. LOPEZ
Municipal Mayor
Office of the Municipal Mayor
Municipality of Libona
Province of Bukidnon

Dear Mayor Lopez:

This refers to your letter dated March 9, 2004, which we received on April 15, 2004 through the 1st Endorsement by Director Arlyn T. Niere of the Department of Budget and Management (“DBM”)– Regional Office X, dated March 29, 2004, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

Copy furnished:

MS. ARLYN T. NIERE
Director
Department of Budget and Management
Regional Office X