

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. 072-2004

May 24, 2004

HON. MILAGROS V. REGALADO
Assistant Commissioner, Legal Service
Chairperson, Bids and Awards Committee
Bureau of Internal Revenue
Quezon City

REGISTRY RECEIPT

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Re : Negotiation of Contract Entered Into Prior to the Effectivity of Republic Act 9184 and its Implementing Rules and Regulations Part A

Dear Asst. Comm. Regalado:

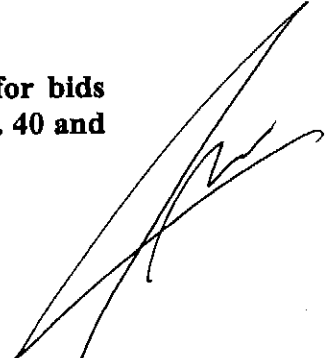
This refers to your letter dated April 22, 2004, which was forwarded to our office by the Office of the Executive Director of the Department of Budget and Management – Procurement Service on April 30, 2004, requesting for guidance/clarification on whether the Bureau of Internal Revenue (“BIR”) may negotiate the multi-year contracts it entered into with the Philippine Computer Associates International, Inc. (“PCA”) prior to the effectivity of Republic Act 9184 (“R.A. 9184”) and its Implementing Rules and Regulations Part A (“IRR-A”).

This concern was raised with regard to the contract provision requiring a supplemental agreement to be executed annually until the contract periods are terminated.

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

The multi-year contracts for the CA Unicenter/TNG and CA Paradigm projects was entered into by BIR and PCA prior to the effectivity of R.A. 9184 and its IRR-A; therefore, exempted from the application of R.A. 9184 and its IRR-A. This is specifically provided under Section 77 of the IRR-A of R.A. 9184, to wit:

In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and



its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be. (Emphasis supplied)

As mentioned in the above-quoted provision, the governing laws, rules and regulations depend on the time the procurement activity is advertised. Hence, having been made prior to the effectivity of R.A. 9184 and its IRR-A, the contract implementation provisions of any of the laws, rules and regulations then applicable shall govern the two (2) multi-year contracts between BIR and PCA.

Moreover, we are of the opinion that the contracts, with a duration of ten (10) and five (5) years, should be considered binding between its parties until such time said contracts are terminated. Any negotiation during such periods shall be governed by the provisions of the contract, supplemented only by procurement laws, rules and regulations then applicable.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

RESPONSE SHEET FOR PHONE OPERATIONS

Date Received/Date Called : April 30, 2004 / May 14, 2004 / May 05, 2004

Requesting Agency : BIR

Contact Person : Asst. Comm. Milagros Regalado 981-7319 / Mr. Nely Iba (981-7441)

Issues/Requests : Whether or not BIR can still negotiate with the supplier PCA for the contracts it entered into ID no contract, it had contracted into prior to the effectivity of RA 9184 & its IRR-A

Response : Sec. 77 of IRR-A. ~~Contracts~~ The contracts having been entered into prior to the effectivity of R.A. 9184 & its IRR-A are ~~to~~ governed by law, rules & regulation then applicable.

REMARKS: Written response requested.

Assigned to: Dennis