

**NPM No. 77-2007**

3 December 2007

**MS. CATALINA FERMIN**

*Executive Director*

**NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS**

Ground Floor, Sugar Regulatory Administration Building

North Avenue, Diliman, Quezon City

**Re : Participation of Cooperatives in Public Procurement**

Dear Ms. Fermin:

We respond to your letter dated 28 April 2006 requesting the Government Procurement Policy Board (GPPB) to relax the application of the following provisions of Republic Act No. 9184 (R. A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) in favor of cooperatives:

- a. Performance Security and Retention Money under Sections 39 and 62, R. A. 9184 and its IRR-A;
- b. Ceiling for Bid Prices under Section 31, R. A. 9184 and its IRR-A;
- c. Contract period and prohibition on splitting of contract.

At the outset, allow us to note that while the GPPB recognizes the role of cooperatives in promoting self-reliance and the need to extend assistance to them in order that they may develop into viable partners, it is without mandate to provide exemptions from the application of R. A. 9184 and its IRR-A. Further, it bears stressing that the rationale for the foregoing provisions insures that procurement is effected in a manner most advantageous to the government in line with the principle of transparency, efficiency and economy under R. A. 9184, *to wit*:

a. On the performance security and retention money, Sections 39 and 62 of R.A. 9184 expressly require the winning bidder to post a performance security or warranty in the form of either retention money or special bank guarantee. The purpose of these securities is to guarantee the faithful performance by the winning bidder of its obligations under the contract, to assure the procuring entity that manufacturing defects shall be corrected by the supplier, and to warrant that the goods supplied are free from patent and latent defects. Any violation of the contract by the contractor/supplier would result in the forfeiture thereof in favor of the Government.

The undertaking of the security is to indemnify the Government for any damage or loss due to non-completion or non-performance of projects. In addition, the warranty provides insurance that should there be defective works by the contractor/supplier, the Government has the means to compel the contractor/supplier to remedy these defective works or use the money retained to pay other parties to correct the defects in a manner satisfactory to the Government.

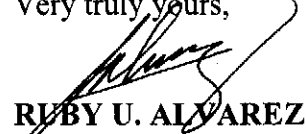
b. As regards the ceiling for bid prices, Section 31 of R. A. 9184 likewise requires that the approved budget for the contract shall be the upper limit or ceiling of the acceptable bid prices. If the bid price is higher than the ABC, the bidder submitting the same shall be disqualified. The rationale for the ceiling of bid prices is to ensure that all procurements are made pursuant to Government budgetary and expenditure programs, to forestall fraud and collusion, and to serve as a deterrent to the execution of unjust and inequitable contracts to the prejudice of the Government and the private parties as well.

c. On the splitting of contracts, Section 54 of the IRR-A of R. A. 9184 provides that such splitting is not allowed. More importantly, Circular No. 76-41 issued by the Commission on Audit prohibits the splitting of requisitions, purchase orders, deliveries and payments. Splitting is often calculated to do away with or circumvent certain control measures instituted by the Government. Splitting of contracts is meant to avoid inspection of deliveries, or to avoid action, review or approval by higher authorities as determined by the amount involved in each case, or to avoid public bidding.

Nevertheless, we wish to note that the GPPB issued Guidelines on Non-Governmental Organization (NGO) Participation in Public Procurement last 29 June 2007. Thus, when an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A, as amended. Under said guidelines, requirements for public bidding or negotiated procurement have been modified to address the unique nature of NGOs, including cooperatives. You may view an electronic copy of these guidelines in our website ([www.gppb.gov.ph](http://www.gppb.gov.ph)).

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

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

Copy furnished:

**Mr. JOHNNY B. LANTION**  
*Manager*

**NATIONAL FEDERATION OF COOPERATIVES OF PERSONS WITH DISABILITY**  
4<sup>th</sup> St., Lot 3 Block 8 Trinidad Homes Subdivision  
Manggahan, Pasig City