

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**

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**NPM No. 085-2004**

June 16, 2004

**MS. CONNIE O. TENENAN**

Municipal Treasurer  
Municipality of Sablan  
Province of Benguet

**Re : Authority to Award the Contract to the Winning Bidder and Undertaking Procurement Projects "By Administration"**

Dear Ms. Tenenan:


This refers to your letter dated May 25, 2004, which we received on June 3, 2004, requesting for clarification on the following issues, to wit:

1. Who has the authority to award the contract to the winning bidder, the Local Chief Executive ("LCE") as the head of the procuring entity or the Bids and Awards Committee ("BAC")?
2. May the Municipality of Sablan undertake infrastructure projects in the amount of Five Hundred Thousand Pesos (Php 500,000.00) and below "by administration"?

**Authority of the LCE to Award the Contract to the Winning Bidder**

Section 37 of Republic Act No. 9184 ("R.A. 9184") and its counterpart provision in Section 37.2.1 of its Implementing Rules and Regulations Part A ("IRR-A") are explicit on this point, to wit:

"Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, **the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation.** In case of approval, **the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder**



**with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. x x x x** (Emphasis Supplied)

In this connection, the functions of the BAC, as provided under Section 12 of R.A. 9184 and its IRR-A are enumerated hereunder, as follows:

1. advertise and/or post the invitation to bid;
2. conduct pre-procurement and pre-bid conferences;
3. determine the eligibility of prospective bidders;
4. receive bids;
5. conduct the evaluation of bids;
6. undertake post-qualification proceedings;
7. resolve motions for reconsideration;
8. ***recommend award of contracts to the head of the procuring entity or his duly authorized representative;***
9. recommend the imposition of sanctions in accordance with Article XXIII / Rule XXIII of R.A. 9184 / IRR-A;
10. perform such other related functions as may be necessary;
11. recommend to the head of the procuring entity the use of Alternative Methods of Procurement, in proper cases.

Based on the foregoing citations, it is clear that the conduct of the aforementioned steps which constitute the entire bidding process for procurement projects is lodged with the BAC except for the act of awarding the contract to the winning bidder, which responsibility is exclusively given to the head of the procuring entity or his duly authorized representative. While the BAC recommends to the head of the procuring entity the award of the contract to the winning bidder after thorough and careful evaluation of bids and post-qualification of the Lowest Calculated Bid ("LCB") or the Highest Rated Bid ("HRB"); it is still the head of the procuring entity or the LCE, in the case of local government units ("LGUs"), who has the sole authority to award the contract by approving the recommendation made by the BAC and consequently, issuing the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid.

However, the head of the procuring entity may exercise the discretion of not approving the recommendation made by the BAC, only under any of the justifiable circumstances mentioned in Section 41 of R.A. 9184 and its IRR-A, quoted hereunder, to wit:

- a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the procuring entity, or between the BAC and

any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;

- b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity; (ii) if the project is no longer necessary as determined by the head of the procuring entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

Accordingly, if the head of the procuring entity refuses to award the contract notwithstanding the recommendation made by the BAC outside the aforementioned justifiable circumstances, we believe that the same may be considered as an act of "Abuse by the Head of the Procuring Entity to reject any and all bids under Section 41 of R.A. 9184 and its IRR-A," which is an offense punishable under Section 65 (a)(5) of R.A. 9184 and Section 65.1 (5) of its IRR-A.

#### **Implementation of Infrastructure Projects "By Administration"**

In two earlier opinions, particularly NPM 064-2004 dated May 6, 2004 and NPM 073-2004 dated May 24, 2004, we had the opportunity to discuss the issue of whether the implementation of projects "by administration" is still allowed by R.A. 9184 and its IRR-A as follows:

The IRR-A of R.A. 9184 provides that procuring entities have the option to undertake projects "by administration" in the cases mentioned in Section 53(b) thereof, to wit:

**In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services,** infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high risk areas, through the AFP; (Emphasis supplied)

It appears from the above-quoted provision that procuring entities may opt to undertake projects "by administration" only in the cases specified therein. These are as follows: (a) imminent danger to life or property during a state of calamity; (b) time is of the essence arising from natural or man-made

calamities; (c) other causes where immediate action is necessary to prevent damage to or loss of life or property; or (d) to restore vital public services.

Applying the principle of *expressio unius est exclusio alterius* (express mention is implied exclusion) which means that the express mention of one thing, will as a general rule, exclude others not mentioned, procuring entities cannot undertake a project "by administration" other than in the cases specifically mentioned in Section 53(b) of the IRR-A of R.A. 9184.

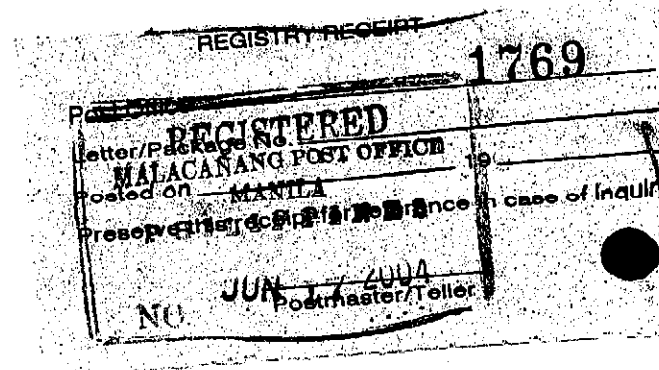
In view of the foregoing, we are of the opinion that projects may still be implemented "by administration," provided however, that any of the situations specified in Section 53(b) of the IRR-A of R.A. 9184 is present and subject to the Guidelines that will be issued by the Government Procurement Policy Board ("GPPB").

In this connection, we wish to inform you that during the 4<sup>th</sup> GPPB meeting held on June 10, 2004, the matter of undertaking projects "by administration" was discussed therein and the GPPB members have come up with a set of guidelines in the implementation of the said projects. With this, it may be worthy to mention that the GPPB Guidelines as regards the undertaking of projects "by administration" will soon be promulgated and published.

With the foregoing elucidations, we trust that our opinion has provided the Municipality of Sablan the needed information in its conduct of awarding the contract to the winning bidder, and in its undertaking of infrastructure projects "by administration." Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,

  
**JOSE MARTIN C. SYQUIA**  
Executive Director



Gse / gppb-tso