

GOVERNMENT PROCUREMENT POLICY BOARD (GPPB) - TECHNICAL SUPPORT OFFICE

CALENDAR YEAR - 2003

For the Month of June

NON-POLICY MATTERS

Name of Agency	Date Received by GPPB-TSO	Date Released by GPPB-TSO	Issues/Queries/Concerns	Brief Conclusion of the Reply of GPPB-TSO
1. Office of the Provincial Board, Province of Cebu	06/04/03	06/03/03 (TSO NPM No.010- 2003)	<p>Re: Applicable Procurement Procedure Pending Approval of the IRR of R.A. 9184</p> <ul style="list-style-type: none"> • What guidelines will be used in the absence of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 918)? • Is it legal to use the IRR of Executive Order No. 40 (E.O. 40) as the IRR of R.A. 9184? 	<p>Applicable Law Pending Finalization of the IRR of R.A. 9184:</p> <p>R.A. 9184 cannot be fully implemented until its IRR is finally approved by the President and published for dissemination. For this reason, we believe that the procedures embodied in existing laws, such as E.O. 40, and its IRR, and, in the case of Local Government Units, the relevant provisions of procurement of R.A. 7160 and its IRR, shall still apply until the IRR of R.A. 9184 shall have been finally approved.</p> <p>Applicability of the IRR of E.O. 40</p> <p>Although we opine that E.O. 40 and its IRR, as well as the relevant provisions of R.A. 7160 and its IRR, are applicable until the full effectivity of R.A. 9184, it should be noted that the IRR of E.O. 40 cannot be considered as the IRR of R.A. 9184 for the</p>

				<p>simple reason that they refer to different laws. Particularly, while the former is an executive issuance, the latter is a legislative enactment which provides for the issuance and effectivity of its own implementing rules. (See R.A. 9184, Section 75) As such, it should be further noted that, while we believe that agencies may apply the procurement procedures under existing laws in the absence of the IRR of R.A. 9184, it would be prudent for these agencies to ensure that the said provisions are not in direct conflict with the clear and self-executing provisions of R.A. 9184.</p>
<p>2. University of the Philippines - Open University (UPOU)</p>	<p>03/19/03</p>	<p>06/12/03 (TSO NPM No.011-2003)</p>	<p>Re: Request for Comments/ Suggestions on the Comparison of the Different Modes of Procurement Under R.A. 9184 and their Existing or Internal University of the Philippines - Open University (UPOU) Guidelines and Procedures:</p> <ul style="list-style-type: none"> • Whether or not competitive bidding is applicable only if the cost for the project is 	<p>A. Competitive Bidding:</p> <p>Contrary to the practice of UPOU, where it conducts public bidding only if the project cost is more than Five Hundred Thousand Pesos (PHP.500,000.00), R.A. 9184 did not qualify or restrict the use of</p>

			<p>more than Five Hundred Thousand Pesos (Php500,000.00).</p> <ul style="list-style-type: none"> • Whether or not UPOU can still utilize the pre-qualification process to determine who are qualified to participate in the bidding. 	<p>competitive bidding in government procurement. As it is, the general rule is to procure by way of competitive bidding regardless of the project cost, and it is only in particular circumstances that government agencies are allowed to procure utilizing the alternative methods of procurement.</p> <p>B. Pre-qualification</p> <p>In Sections 23 and 24 of R.A. 9184, the Bids and Awards Committee (BAC) is mandated to determine the eligibility of bidders to be able to participate in the bidding proper. It should be noted that the concept of pre-qualification was totally abandoned in R.A. 9184.</p> <p>Even under E.O. 40 and its IRR, pre-qualification has been substituted by the simple eligibility checking or screening process, where the BAC employs a non-discretionary pass/fail criteria during the eligibility screening of the bidder's technical, legal and financial documents.</p> <p>In view of the foregoing, we believe that UPOU should now use the simple eligibility checking or screening in place of the pre-qualification process.</p>
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			<ul style="list-style-type: none"> • Whether or not UPOU may employ Repeat Order as an alternative method of procurement, if it would exceed twenty-five percent (25%) of the original contract. • Whether or not UPOU can still conduct sealed bidding as an alternative method of procurement. 	<p>obtained at more advantageous terms to the Government.</p> <p>D. Repeat Order:</p> <p>R.A. 9184 allows the use of Repeat Order as an alternative method of procurement. However, in order to avail of this mode, each procuring entity would have to comply with the conditions provided for under Section 51 of R.A. 9184.</p> <p>It must be stressed, however, that the Repeat Order shall not exceed twenty-five percent (25%) of the quantity of each item in the original contract. Thus, under R.A. 9184, UPOU would no longer be able to conduct Repeat Order more than 25% of the quantity of the original contract as previously practiced.</p> <p>E. Sealed Bidding</p> <p>Sealed bidding as an alternative mode of procurement is not allowed under R.A. 9184. Section 48 of R.A. 9184, the provision governing the various alternative methods of procurement, makes no mention of "sealed bidding."</p>
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<p>3. Philippine Charity Sweepstakes Office (PCSO)</p>	<p>05/27/03</p>	<p>06/12/03 (TSO NPM No.012-2003)</p>	<p>Re: Applicable Procurement Procedure Pending Approval of the IRR of R.A. 9184</p> <ul style="list-style-type: none"> • Whether or not the Philippine Charity Sweepstakes Office (PCSO) should wait for the issuance of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184), otherwise known as the "Government Procurement Reform Act," before it commences with the application and implementation thereof. 	<p>Applicable Law Pending Finalization of the IRR of R.A. 9184 :</p> <p>It must be noted that although R.A. 9184 is already effective, the said law cannot be fully implemented unless and until its IRR has been finally approved by the President and published for dissemination.</p> <p>Accordingly, in order to prevent delay, inconvenience or hiatus in its procurement activities, we further believe that PCSO need not wait for the issuance of the IRR of R.A. 9184 and may proceed with the conduct of its procurement, applying the procurement rules and procedures embodied in E.O. 40 and its IRR. It is in this connection that we inform your office that during the 3rd Meeting of the GPPB on May 26, 2003, the members unanimously agreed that Government agencies are justified in applying E.O. 40 in the absence of the IRR of R.A. 9184 that in cases where invitations for bids were issued after the effectivity of R.A. 9184 but before the effectivity of its IRR, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, or other applicable laws.</p>
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<p>4. Metropolitan Waterworks and Sewerage System (MWSS) - Regulatory Office</p>	<p>05/26/03</p>	<p>06/12/03 (TSO NPM No.013-2003)</p>	<p>Re: Application of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act"</p> <ul style="list-style-type: none"> • Preparation of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act," and • Use of R.A. 9184 prior to the issuance of its IRR 	<p>A. Preparation of the IRR:</p> <p>For appropriate implementation, Section 75 of R.A. 9184 mandates that the Government Procurement Policy Board (GPPB) and the members of the Joint Congressional Oversight Committee to prepare and formulate the corresponding IRR of the law for the approval by the President. At present, the draft IRR is already in its final stage of preparation, minor revisions are being made and the contentious provisions and issues are now being discussed for finalization. As soon as the IRR is approved by the President, we shall have the same immediately published for dissemination.</p> <p>B. Use of the GPRA Prior to the Approval of the IRR:</p> <p>It must be noted that although R.A. 9184 is</p>

				<p>already effective, the said law cannot be fully implemented unless and until its IRR has been approved by the President and published for dissemination.</p> <p>Accordingly, in order to prevent delay, inconvenience or hiatus in its procurement activities, we further believe that MWSS Regulatory Office need not wait for the issuance of the IRR of R.A. 9184 and may proceed with the conduct of its procurement, applying the procurement rules and procedures embodied in E.O. 40 and its IRR. It is in this connection that we inform your office that during the 3rd Meeting of the GPPB on May 26, 2003, the members unanimously agreed that Government agencies are justified in applying E.O. 40 in the absence of the IRR of R.A. 9184 that in cases where invitations for bids were issued after the effectivity of R.A. 9184 but before the effectivity of its IRR, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, or other applicable laws.</p>
5. Department of Health (DOH) - Regional Field Office VI	06/10/03	06/16/03 (TSO NPM No.014-2003)	<p>Re: Applicable Procurement Procedure Pending Approval of the IRR of R.A. 9184</p> <ul style="list-style-type: none"> • Whether or not the Implementing Rules and Regulations 	<p>Applicable Law Pending Finalization of the IRR of R.A. 9184 :</p> <p>It must be noted that although R.A. 9184 is already effective, the said law cannot be</p>

			<p>(IRR) of Executive Order No. 40, Series of 2001 (E.O. 40), may still be used until such time that the IRR of Republic Act No. 9184 (R.A. 9184) is approved.</p>	<p>fully implemented unless and until its IRR has been approved by the President and published for dissemination.</p> <p>Accordingly, in order to prevent delay, inconvenience or hiatus in its procurement activities, we further believe that your office need not wait for the issuance of the IRR of R.A. 9184 and may proceed with the conduct of its procurement, applying the procurement rules and procedures embodied in E.O. 40 and its IRR. It is in this connection that we inform your office that during the 3rd Meeting of the GPPB on May 26, 2003, the members unanimously agreed that Government agencies are justified in applying E.O. 40 in the absence of the IRR of R.A. 9184 that in cases where invitations for bids were issued after the effectivity of R.A. 9184 but before the effectivity of its IRR, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, or other applicable laws.</p>
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