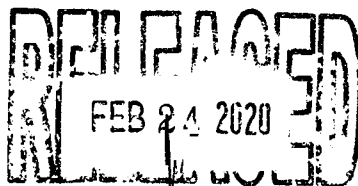




Republic of the Philippines
Department of Education
Cordillera Administrative Region

Office of the Regional Director

REGIONAL MEMORANDUM
065.2020



February 20, 2020

DEPED-CAR

**Reiteration of Liabilities on Violations of the
Government Procurement Reform Act (RA 9184), its
Implementing Rules and Regulations (IRR), and related Laws**

To: Schools Division Superintendents
BAC Members (Region, SDOs, Schools)
BAC Secretariat (Region, SDOs, Schools)
BAC TWG (Region, SDO, School)
End-Users
Suppliers/Contractors
All others concerned

1. It has come to the attention of this Office that some DepEd-CAR employees were administratively disciplined or are under administrative disciplinary investigation because of manipulating the procurement process within their jurisdiction or area;
2. Thus, to avoid further similar incidents, faithful implementation of the procurement processes provided for in RA 9184 and its IRR should be complied strictly;
3. It is reiterated that RA 9184 and its IRR provides for a standardized and streamlined procurement process in order to ensure **transparency, competitiveness, and accountability** from pre-procurement to implementation of projects;
4. It is stressed that RA 9184 provides for penal, civil, and administrative sanctions in case of violations of its provisions. Also, acts in violations of procurement processes may also be considered violations of the Anti-Graft and Corrupt Practices Act (RA 3019) and other laws which may be prosecuted separately.
5. All the prohibited acts pertaining to the procurement process and its corresponding penalties are in Articles XXI, XXII, XXIII of RA 9184. The following are some of the prohibited acts mentioned in said articles:



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- Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:
 - a. When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid;
 - b. When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest to create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder;
 - c. When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them;
 - d. When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the Government.

- Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:
 - a. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding;
 - b. Submit Bidding Documents of whatever kind and nature that contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding;
 - c. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding;





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- d. Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or refuse to accept an award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission within the prescribed time, or delaying the submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract;
- e. When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

A conviction under RA 9184 or Republic Act No. 3019 shall carry with it civil liability, which may either consist of restitution for the damage done or the forfeiture in favor of the government of any unwarranted benefit derived from the act or acts in question or both, at the discretion of the courts.

6. All prohibited acts regarding procurement in general and those considered as graft and corrupt practices including its penalties are in Sections 3, 4, 5, 9, 12 and 13 of RA 3019. The following are some of the acts constituting corrupt practices of any public officer and are hereby declared to be unlawful:
 - Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.
 - Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.
 - Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.
 - Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;
 - Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in





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such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

- Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.
7. Also, always remember that public office is a public trust.¹ The Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713) enumerates the acts expected from a public official, the prohibited acts and transactions, and its corresponding penalties.
8. Clearly, any violation of the procurement law may result to violations in all of the above laws which may be prosecuted separately, and may give rise to criminal, civil, administrative liabilities simultaneously. The penalty/ies include IMPRISONMENT, FINE, and/or SUSPENSION or DISMISSAL from public service. The Supreme Court² states that:

The "threefold liability rule" holds that the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. This simply means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held civilly liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Finally, such violation may also lead to suspension, removal from office, or other administrative sanctions.

9. Consequently, the BAC and all concerned personnel shall report to their respective Disciplining Authority if they have knowledge of any collusion or misconduct relative to procurement;
10. All Disciplining authorities shall immediately order an investigation to verify reports on violations of the procurement process and shall issue a *motu*

¹ Section 1, Article XI, 1987 Philippine Constitution

² Ramiscal, Jr. vs COA, G.R. No. 213716, October 10, 2017.






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proprio charge in case there is prima facie evidence that the personnel is involved in any collusion or misconduct during or after procurement.

For strict compliance.


MAY B. ECLAR, Ph.D., CESO V
Regional Director

ORD/LU/VBF/jsd



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