



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF BUDGET AND MANAGEMENT
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

Unit 1103 Taipan Place, Emerald
Ave., Ortigas Center, Pasig City, 1605
Philippines
Tel.: 687-4853 to 55
Fax: (632) 638-3495

TSO NPM No. 07-2003

April 4, 2003

CAPT. ROWELL S. VELASQUEZ
Executive Officer, Philippine Army
Procurement Unit
Armed Forces of the Philippines Logistics Center
Camp General Emilio Aguinaldo, Quezon City

Re : Shopping as an Alternative Method of Procurement

Dear Capt. Velasquez:

This refers to your letter of February 20, 2003, which was referred to us on March 7, 2003, seeking opinion on the propriety of using "Shopping" as an alternative method of procurement on Work Orders for the repair and maintenance of organic vehicles of the Armed Forces of the Philippines ("AFP"). We base this opinion upon the assumption that your letter does not refer to the hiring by an agency of personnel on a "Job Order" basis under relevant Civil Service Rules.

At the outset, it must be stressed that the alternative methods of procurement as provided under Section 35 of Executive Order No. 40, Series of 2001 ("E.O. 40"), and its Implementing Rules and Regulations ("IRR"), may be resorted only as a last recourse, considering that the State's policy on the matter is that Government agencies should procure by way of "competitive and transparent public bidding." Particularly, Section 2 of E.O. 40 provides:

Section 2. Statement of Policy. It is the policy of the government that procurement shall be competitive and transparent and therefore shall be through public bidding, except as otherwise provided in this Executive Order.

Section 2.1 of the IRR, on the other hand, provides:

2.1. It is the policy of the Government that procurement of civil works, goods, supplies, materials and related services, and consulting services shall be competitive and transparent, and therefore shall be through public bidding, except as otherwise provided in these IRR. xxx xxx xxx

Hence, it can be gainsaid that under our jurisdiction, public bidding is the rule, and the use of any of the alternative methods is the exception.

However, in the interest of public service, economy and efficiency, an agency, upon the recommendation of the Bids and Awards Committee ("BAC") and the approval of the Head of the Agency, may adopt any of the alternative methods of procurement provided in Section 35 of the IRR of E.O. 40, whenever justified by the extraordinary circumstances provided therefor. As suggested in your letter; one of these alternative methods of procurement is that provided in Section 35.1.4 which allows "Shopping" under any of the following cases, to wit:

- a) Procurement of readily available off-the-shelf goods or standard specifications goods that are small in value, i.e., amounts involving one million pesos (Php. 1,000,000) or less;
- b) Procurement of ordinary/regular equipment involving an amount not to exceed one million pesos (Php. 1,000,000): *Provided*, That said amount shall be subject to a periodic review by the PPB. For this purpose, the PPB shall be authorized to increase or decrease the said amount through amendment of these IRR in order to reflect changes in economic conditions.

Shopping is a method of procurement whereby the purchaser simply requests for the submission of price quotations for the goods/services to be procured directly from suppliers of known qualifications and, to ensure competitive prices determined after verification of the prevailing market prices, the BAC concerned shall obtain quotations from at least three (3) suppliers; provided, that, the prohibition against splitting of contracts shall be equally applicable to this alternative method of procurement. However, in the procurement of services for Work Orders for the repair and maintenance of organic vehicles, it seems that shopping is not the applicable alternative method, considering that "repair services" is neither contemplated in the concept of "off-the-shelf goods," nor in the common acceptance of "ordinary/regular equipment."

To our mind, negotiation as an alternative method may be adopted by the AFP for the procurement of services for Work Orders. Section 35.1.5 of the IRR of E.O. 40 allows negotiation under any of the following cases, to wit:

35.1.5. *Negotiated Procurement for Goods* may be employed by agencies only in the following cases:

- a) Where there has been failure of public bidding for the second time as provided under the relevant provisions of these IRR;
- b) Where the existing contract has been terminated in accordance with the pertinent provisions of these IRR and existing laws, rules and regulations;
- c) Whenever the goods are to be used in connection with a project or activity which cannot be delayed without causing detriment to public service; and
- d) Whenever the purchase is to be made from another agency of the Government.

In this regard, in view of the circumstances behind the procurement of Work Orders for the repair and maintenance of organic vehicles, the AFP may consider studying the possibility of adopting negotiation as an alternative method of procurement, particularly under the case where a project or activity cannot be delayed without causing detriment to public service. We stress, however, that the AFP must be able to justify and prove the necessity and the extraordinary circumstance that would be relied upon.

At this point, it is important to note that Republic Act No. 9184 ("R.A. 9184"), otherwise known as the "Government Procurement Reform Act," recently took effect on January 26, 2003, although its IRR would still have to be issued by the President. In this regard, the provisions of R.A. 9184 on Shopping are more restrictive and specific than those found in E.O. 40 and its IRR. In particular, Sec. 52 (b) of R.A. 9184 clearly specifies that Shopping may be undertaken for the "[P]rocurement of ordinary or regular office supplies and equipment..." thereby striking out any possibility of extending its application to Work Orders. The same provision also provides that the equipment or supply should not be available in the Procurement Service, and the amount should not exceed Two Hundred Fifty Thousand Pesos (Php. 250,000.00). The other ground for Shopping found in Section 52 (a) of R.A. 9184, provides for an "unforeseen contingency requiring immediate purchase," provided that the amount should not exceed Fifty Thousand Pesos (Php. 50,000.00).

With respect to negotiation under R.A. 9184, it should be noted that Section 53 (b) no longer provides for a situation wherein a project or activity cannot be delayed without causing detriment to public service. It now specifically says that negotiation shall be allowed only "[I]n 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 actions is necessary to prevent damage to or loss of life or

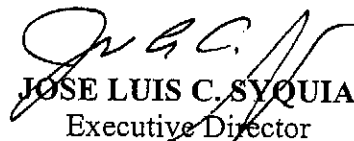
property, or to restore vital public services, infrastructure facilities and other public utilities." Moreover, it should also be noted that Section 10 of R.A. 9184 reiterates the policy in E.O. 40 that "[A]ll procurement shall be done through competitive bidding," except as otherwise provided.

In fine, while Work Orders for the repair and maintenance of your vehicles may not necessarily fall under "Shopping" as an alternative method of procurement, there may be certain emergency situations when negotiation may be resorted to, although an agency would have to cautiously consider this method, because of the general policy in favor of public bidding. In other words, in the absence of an actual imminent danger or detriment to public service, it is always safe to conduct a public bidding, because it is the generally accepted method of procurement under the law.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. However, if upon further study or investigation, it would be disclosed that the facts are different from the afore-mentioned representations and assumptions, if any, and then this opinion may no longer be applicable. Nor may this opinion be necessarily applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,


JOSE LUIS C. SYQUIA
Executive Director

Copy Furnished:

Dir. Estanislao C. Granados, Jr.
Director, Procurement Service (PS)
Department of Budget and Management (DBM)
Fax No: (632) 561-7025