

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**

*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
*Telefax.: (02) 735-4962, (02) 736-5758*

---

TSO NPM No. 05-2004

January 5, 2003

**HON. FLORANTE SORIQUEZ**

Secretary  
Department of Public Works and Highway  
Port Area, Manila

Dear Secretary Soriquez:

Re : Clearance for the purchase of twin-engine helicopter using the alternative method of procurement, in particular, direct contracting or negotiated procurement

This refers to your letter dated October 7, 2003 addressed to the Honorable Emilia T. Boncodin, Secretary, Department of Budget and Management, which we received on October 10, 2003 requesting for a clearance to purchase a twin-engine helicopter using the alternative method of procurement, in particular, direct contracting or negotiated procurement.

**Alternative methods of procurement under the Implementing Rules and Regulations (IRR-A) of Republic Act No. 9184 (R.A. 9184)**

*Section 10 of IRR-A of R.A. 9184* states that all procurement shall be done through competitive bidding, except as provided under Rule XVI thereof, which speaks of the alternative methods of procurement. One of the alternative methods of procurement allowed by law is Direct Contracting as provided under *Section 50 of the IRR-A of R.A. 9184*, to wit:

"Direct contracting may be resorted to by concerned procuring entities under any of the following conditions:

\* \* \* \*

- c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government."

Under R.A. 9184 and its IRR-A, this alternative method of procurement may be resorted to by the procuring entity only when there is an exclusivity of dealer or manufacturer and such dealer or manufacturer sells at lower prices and provided further that, no suitable substitute can be obtained by the procuring entity at more advantageous terms. These conditions must be present before the procuring entity be permitted to resort to this alternative method of procurement.

Based on the given facts in your letter, the condition of exclusivity of dealer or manufacturer is lacking. In fact, there are three (3) manufacturers from which DPWH can procure the twin-engine helicopter. Although the Polish Aircraft Company has given the lowest price for the "PZL W-3A Sokol", ex-demo unit, other helicopters from different manufacturers such as the "Eurocopter AS-365N3" and "S76C Sikorsky" have the same specifications and payload capacity. This means that DPWH can procure the twin-engine helicopter from any of these manufacturers since all these helicopters meet the technical specifications prescribed by DPWH.

DPWH also invoke Section 35.1.5(c) of the IRR of E.O. 40 which provides for negotiated procurement. However, it must be noted that R.A. 9184 has already repealed E.O. 40. Thus, the relevant provisions in the IRR-A of R.A. 9184, in particular *Section 53* now governs this alternative method of procurement, viz:

"Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

\* \* \* \*

- b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from the 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 security risk areas, through the AFP;"

\* \* \* \*(Emphasis supplied)

Clearly, in the light of the foregoing, the procuring entity is only permitted to resort to negotiated procurement when it is necessary to prevent damage to or loss of life or property, or to restore vital public service. This means that in order for the procuring entity to resort to this kind of method of procurement, there must be some sort of exigency in the procurement, requiring immediate action.

However, DPWH has not shown that the procurement of a twin-engine helicopter is an exigency. In fact, presently, DPWH has a fourteen-year single engine helicopter, which

is still in operation. Although, DPWH sees the need to replace this existing helicopter for fast-tracking projects located nationwide, the non-procurement of the twin-engine helicopter would neither cause damage or loss to life or property nor would it be detrimental to public service.

Based on the discussion above, we believe that DPWH must conduct public bidding on its procurement of a twin-engine helicopter since the procurement of said helicopter does not fall under the requested alternative method of procurement, in particular, direct contacting and negotiated procurement.

However, aside from public bidding DPWH has the option to rent the helicopter on a need basis or to resort to *Limited Source Bidding* as provided under *Section 49 of IRR-A of R.A. 9184, to wit:*

"Limited Source Bidding, otherwise known as selective bidding, is a method of procurement of goods and consulting services, that involves direct invitation to bid by the concerned procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements of the particular contract. The pre-selected suppliers or consultants shall be those appearing in a list maintained by the relevant Government authority that has been submitted to, and maintained updated with, the GPPB. The BAC of the concerned procuring entity shall directly send to the pre-selected bidders the invitation to bid, which shall indicate the relevant information required to enable the bidders to prepare their bids as prescribed under the pertinent provisions of this IRR-A. Limited source bidding may be employed by concerned procuring entities under any of the following conditions:

- a) Procurement of highly specialized types of goods and consulting services where only a few suppliers or consultants are known to be available, such that resorting to public bidding method will not likely result in any additional suppliers or consultants participating in the bidding; or"

\* \* \* \*(Emphasis supplied)

We are of the opinion that DPWH may resort to this method of procurement since the twin-engine helicopter is considered a highly specialized type of equipment. Moreover, there are only few manufacturers known and available, considering the specifications needed by DPWH. However, under this alternative method of procurement, the procuring entity shall send to all pre-selected suppliers or manufacturer having the expertise in the type of procurement concerned, the invitation to bid indicating therein the relevant information required to enable the latter to prepare their bids as prescribed under the pertinent provisions of IRR-A of R.A. 9184.

With the foregoing elucidations, we trust that our opinion has provided DPWH with needed information in the procurement of a twin-engine helicopter.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

Very truly yours,



**ESTANISLAO C. GRANADOS, JR.**  
Acting Executive Director