

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**Technical Support Office**  
*Mezzanine 125, Mabini Hall, Malacañang, Manila*  
*Telefax Nos. (02) 735-4962; (02) 736-5758*

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**NPM No. 020-2004**

February 26, 2004

**MR. CESAR M. SERENILLA**  
Chairman  
Technical Working Group  
Provincial Awards Committee  
Province of Nueva Vizcaya

**Re : Prohibition on Reference to Brand Names and Procurement of Branded Common-Use Goods**

Dear Mr. Serenilla:

This refers to your letter dated January 23, 2004 requesting clarification on the following matters:

1. Prohibition on reference to brand names as specified under Section 18 of Republic Act 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A"); and
2. Procurement of branded goods and common-use supplies.

This is in connection with the pending request in your office for the procurement of twelve (12) units of Nokia 6600 and one (1) unit of Samsung SGH-E700 mobile phones, as well as one (1) Nissan Frontier 4 x 4 vehicle.

**Prohibition on Reference to Brand Names**

Section 18 of R.A. 9184 and its IRR-A, specifically prohibits reference to brand names for the procurement of goods, to wit:

Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. **Reference to brand names shall not be allowed.** (Emphasis supplied)



As can be gleaned from the above-quoted provision, the prohibition on reference to brand names is without any exception or condition. This is a case where no interpretation and construction is necessary. It is a cardinal rule [in] statutory construction that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application.<sup>1</sup>

Taking into account such prohibition, procuring entities should augment its resources and develop its capabilities in drafting detailed technical specifications for its procurements so as to acquire the type or nature of the product desired.

### **Procurement of Branded Goods and Common-Use Supplies**

Section 10 of R.A. 9184 provides that all procurement shall be done through competitive bidding, except as provided for in Article XVI on Alternative Methods of Procurement. Procuring entities should, as far as circumstances may allow, conduct its procurement through competitive bidding. However, in cases provided under Rule XVI of IRR-A of R.A. 9184, procuring entities may resort to alternative methods of procurement. Following the principle of *expressio unius est exclusio alterius*, other than those methods and circumstances mentioned under Article XVI of R.A. 9184 and Rule XVI of its IRR-A, no other alternative method of procurement may be resorted to by any procuring entity. For this reason, irrespective of price or brand, procurement of goods may only be conducted through competitive bidding or through any of the alternative methods of procurement under Section 48 of R.A. 9184 when applicable.

It should be noted that the term "independent canvass" is not recognized by R.A. 9184 as a mode of procurement, alternative or otherwise. However, it may be useful to add that canvass, although no longer recognized under RA. 9184, is practiced in the concept of the alternative method of shopping provided under Section 52 of R.A. 9184 and its IRR-A. This Section provides that procuring entities may simply request price quotations for readily available off-the-shelf goods or ordinary/regular equipment from suppliers of known qualifications in case of unforeseen contingency or non-availability in the Procurement Service of the Department of Budget and Management ("PS-DBM") of the ordinary/regular office supplies or equipment; provided, that in the latter case, at least three (3) price quotations from bona fide suppliers shall be obtained.

With regard to the procurement of common-use supplies, the IRR-A specifically provides that the same shall be undertaken through the PS-DBM. This is supported by Section 54.2(g) of IRR-A of R.A. 9184 which provides as follows:

With respect to item (e) of Section 53 of the Act and this IRR-A, a direct negotiation may be made with the Government agency concerned: *Provided, however,* That the **procurement of common-use goods and supplies shall be undertaken through the PS-DBM.** (Emphasis supplied)

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<sup>1</sup> *Cebu Portland Cement Co. v. Municipality of Naga*, G.R. Nos. 24116-17, August 22, 1963.

The IRR-A categorically mandated procuring entities to buy its common-use goods and supplies from the PS-DBM. The only exception from this rule is in case the common-use goods sought to be procured is not available in the PS-DBM, in which case, procuring entities may resort to the alternative method of shopping. It should be emphasized, however, that this exception does not extend to a circumstance where the brand of the common-use goods sought to be procured is not available with the PS-DBM.

In view of the foregoing, so long as the common-use goods sought to be procured are available in the PS-DBM, procuring entities shall buy therefrom irrespective of their brand preference.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director

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