

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
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**NPM No. 027-2004**

**March 12, 2004**

**MR. ROBERT DEAN BARBERS**

General Manager  
Philippine Tourism Authority

Re: **Request for Authority to procure a Twin-Engine Helicopter and Airplane using the Alternative Method of Procurement, in particular, Direct Contracting and Negotiated Procurement**

Dear Mr. Barbers:

This refers to your Memorandum for the President dated 8 December 2003, which was referred to the Office of Honorable Emilia T. Boncodin, Secretary, Department of Budget and Management, which we received on 30 January 2004 requesting for an authority to procure a twin-engine helicopter and airplane using the alternative method of procurement, in particular, direct contracting or negotiated procurement.

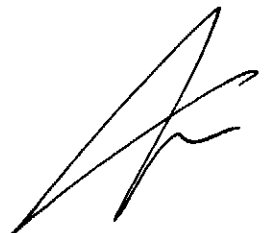
**Alternative methods of procurement under the Implementing Rules and Regulations (IRR-A) of Republic Act No. 9184 (R.A. 9184)**

*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 facts given in your letter, the condition of exclusivity of dealer or manufacturer that offers the lowest price is lacking. Although Polish Aircraft Company PZL Swidnik has an exclusive dealer in the Philippines, the Philippine Polish Industries, Inc., there are other dealers or manufacturers from where Philippine Tourism Authority (PTA) can procure the aircrafts. In addition, reference to brand names is not allowed under R.A. 9184 and its IRR-A, Section 18. The specifications for the procurement of aircrafts shall be based on their relevant characteristics and/or performance requirements.

In our opinion, **TSO NPM 05-2004**<sup>1</sup>, DPWH wants to procure a twin engine helicopter from Polish Aircraft Company since it offers the lowest price as compared to other dealers or manufacturers, the GPPB is of the opinion that DPWH must still conduct public bidding even if the Polish Aircraft Company offers the lowest price since the twin engine helicopter is also available from other dealers and manufacturers,

PTA also invokes 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

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<sup>1</sup> 5 January 2004

entity to resort to this kind of method of procurement, there must be some sort of exigency in the procurement, requiring immediate action.

In your letter, PTA has not shown that the procurement of helicopter and airplane is an exigency. In fact, PTA has an existing twin engine helicopter. Although the immediate acquisition of the aircrafts will provide the necessary assurance to tourists and divers and better position the country as preferred tourists/divers destinations in the world, the non-procurement of the aircrafts 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 PTA must conduct public bidding on its procurement of a twin-engine helicopter and airplane since the procurement of said aircrafts do not fall under the requested alternative method of procurement, in particular, direct contacting and negotiated procurement.

However, aside from public bidding PTA 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"

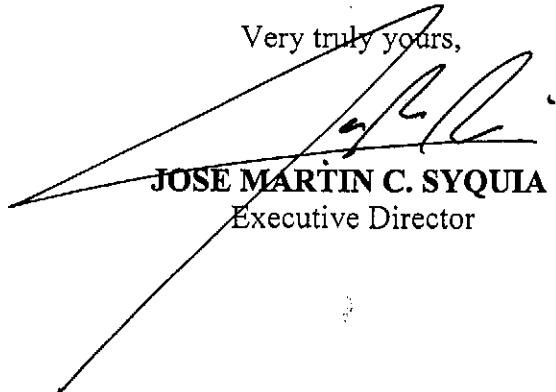
\* \* \* \*(Emphasis supplied)

We are of the opinion that PTA may resort to this method of procurement since the twin-engine helicopter and airplane are considered a highly specialized type of equipment. Moreover, there are only few manufacturers known and available, considering the specifications needed by PTA. 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 PTA with needed information in the procurement of a twin-engine helicopter and airplane.

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,

A large, stylized handwritten signature in black ink, appearing to read 'J. Syquia', is written over the typed name and title. The signature is slanted and extends across the text.

**JOSE MARTIN C. SYQUIA**  
Executive Director