



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Avenue, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 32-2005

July 18, 2005

DIR. ISABEL C. TAGUINOD
Director IV
Department of Budget and Management
Regional Office No. II
Tuguegarao City

Re : Applicability of Section 53 (f) of the IRR – A of R.A. 9184

Dear Dir. Taguinod:

This refers to your memorandum dated 28 June 2005 anent your draft reply letter to the request for opinion of Atty. Charlie L. Yap, BAC Chairman of the Provincial Government of Cagayan. The Provincial Government of Cagayan is seeking clarification on the propriety and legality of the application of Section 53 (f) of the Implementing Rules and Regulations Part A (IRR – A) of Republic Act No. 9184 (R.A. 9184) in its activity to engage the services of an individual consultant for the management and operation of the Cagayan Town Center. Thus, the request for comment and/or appropriate action on the said draft letter-reply.

Applicability of Section 53 (f) – Negotiated Procurement

The general rule is that procuring entities shall adopt public bidding as the mode of procurement. Alternative methods of procurement provided under Rule XVI of R.A. 9184 and its IRR-A may be resorted to only in the highly exceptional cases provided therein.¹

In this regard, procuring entities may resort to negotiated procurement for their procurement of consulting services only if the conditions provided for in Section 53 (f) of R.A. 9184 and its IRR-A is fully complied with. The provision reads as follows:

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:

¹ Section 48.2, IRR-A, R.A. 9184.

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- f) In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: *Provided, however,* That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing head of the procuring entity, but in no case shall exceed the term of the latter;

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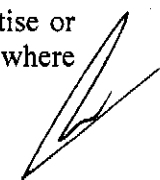
On the matter of the determination of whether the work to be done by the consultant is highly technical or proprietary or is primarily confidential or policy-determining, where trust and confidence are the primary consideration for the hiring of the consultant, the same lies exclusively on the procuring entity's prerogatives. This office is without force to ascertain the presence or absence of the conditions set under the provisions and arrive at a conclusion as to the propriety of procuring consultancy through Negotiated Procurement.

Thus, on the basis of the proposed Terms of Reference (TOR) for the consultancy which presumably reflects the nature and scope of the services, the procuring entity shall determine whether the requirements of the procurement of the Provincial Government of Cagayan qualifies to be within the ambit of Sec. 53 (f) of the IRR-A of R.A. 9184.

Having determined and established that the project falls under the contemplation of Section 53 (f), the Provincial Government, it is submitted, may directly negotiate with a qualified individual consultant, subject to the pertinent requirements provided for in R.A. 9184 and its IRR-A. To be clear, general rules in the procurement of consulting services as prescribed in Section 24 of the IRR-A, as to the conditions for the allowance of such procurement and the eligibility of the consultant to be hired, shall be followed to the extent reasonably possible.

However, the provisions regarding eligibility check, under Section 24.7, are not applicable as the same treats merely of the situations where shortlisting and competitive bidding is required and/or is necessary. This is not the situation in the case where the mode of procurement used is negotiation. Notably, Under Sec 53 (f) of the IRR-A, the procuring entity directly negotiates with a consultant of its trust and confidence and/or is known to render highly technical or proprietary consultancy services.

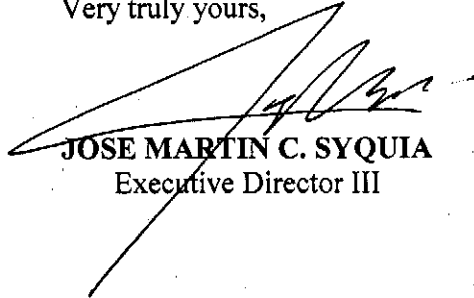
Proceeding from this premise, where negotiations are used as mode of procurement, no bid documents are tendered by any prospective consultant and, therefore, verification, validation or ascertainment of statements made therein may no longer be viable or necessary under the circumstance. This is because, in this case, other than those required to establish expertise or experience in the relevant field, there are no documents to speak of. The eligibility, qualification, appropriate education, training and relevant experience to render the consultancy services are all verified, validated, and ascertained during the negotiations. In other words, the documents required to establish expertise or experience are made subject, not to an eligibility check, but to the negotiations where verification, validation and ascertainment of the same can be made.



Nonetheless, pursuant to Section 8.2.1 of the IRR-A of R.A. 9184, posting shall be made with the G-EPS as to the procurement opportunity and results of the awards, for transparency purposes.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III