

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
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NPM No. 46-2004

April 12, 2004

MR. FRANCISCO T. DUQUE III
President and CEO
Philippine Health Insurance Corporation
Citystate Centre, 709 Shaw Boulevard
Pasig City

Re: Negotiated Contracts with other Government Agencies

Dear Mr. Duque:

This refers to your letter dated October 24, 2003 addressed to Hon. Sec. Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board ("GPPB") which we received on November 14, 2003 requesting for clarification on this issue:

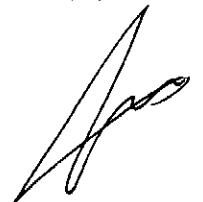
Whether or not Republic Act No. 9184 ("R.A. 9184") and its Implementing Rules and Regulations Part A ("IRR-A") allow negotiated contracts with other government entities for information system reengineering and other incidental services.

Use of Negotiated Procurement under Section 53 (e) of the IRR-A of R.A. 9184

Under Section 53 (e) of the IRR-A of R.A. 9184, a procuring entity may directly negotiate a contract with another government agency in the following cases:

1. Purchases of **goods**¹ from another government agency, such as the Department of Budget and Management - Procurement Service ("DBM-PS"); and

¹ Under Section 5(h) of R.A. 9184 the term "Goods" is defined as "all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the procuring entity for such services.



2. When the procuring entity does not have the proficiency or capability to undertake a particular procurement, as determined by the head of the procuring entity concerned. (Emphasis supplied)

In the latter case, the procuring entity may request other government agencies to undertake the procurement in its behalf.

Furthermore, Section 54.2 (g) of the IRR-A of R.A. 9184 provides:

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.

Accordingly, considering that procurement from another Government agency is an exceptional case identified by the IRR-A warranting the use of Negotiated Procurement, PhilHealth may legally enter into a negotiated contract with another government entity. However, it must be noted that as the aforementioned provisions indicate, direct negotiation with another government agency is allowed only in the procurement of goods.

Thus, if the reengineering of information system and the incidental services which PhilHealth desires to procure from other government entities involve the application of technical and professional expertise such as: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies, then such services are categorized as "Consulting Services"² which are beyond the purview of Section 53 (f) of the IRR-A. In this case, no direct negotiation can be had with another government agency.

On the other hand, if the services to be procured do not require the application technical or professional skill, such may be procured through direct negotiation with another government agency under Section 53 (e) of the IRR-A, since non-personal or contractual services are classified as goods under R.A. 9184. In this case, however, the procuring entity must ensure that such direct negotiation with another government agency promotes economy and efficiency, and that the most advantageous price for the Government is obtained.³ Furthermore, the following methodology should be observed:

1. In the APP, the Bids and Awards Committee shall include a recommendation to the head of the procuring entity on the use of Negotiated Procurement as a method of procurement. If the original mode of procurement recommended in the APP was Public Bidding, the BAC shall recommend the change in the mode of procurement from Public Bidding to Negotiated Procurement through a Resolution to be approved by the head of the procuring entity.
2. The head of the procuring entity shall approve the same.
3. The BAC, through the Secretariat, shall post the procurement activity for a maximum period of fourteen (14) calendar days in:

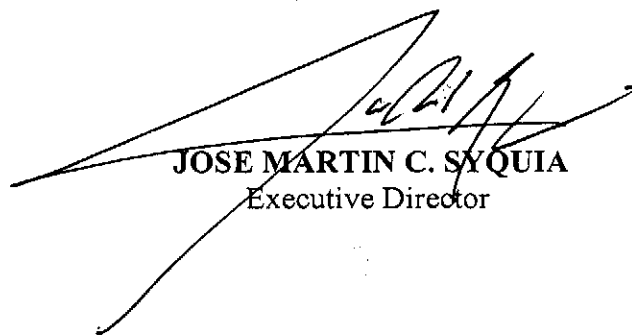
² See Section 5 (f) of the IRR-A of R.A. 9184.

³ See Section 28.1 of the IRR-A of R.A. 9184.

- a) the Government Electronic Procurement System (“G-EPS”),
- b) the website of the procuring entity and its electronic procurement service provider, if any,
- c) any conspicuous place in the premises of the procuring entity.⁴

With the foregoing elucidations, we trust that your queries have been sufficiently addressed. Please bear in mind that this opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not be necessarily applicable upon a different set of facts or circumstances.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

pia/npm

⁴ See Section 54.2,e of the IRR-A of R.A. 9184.