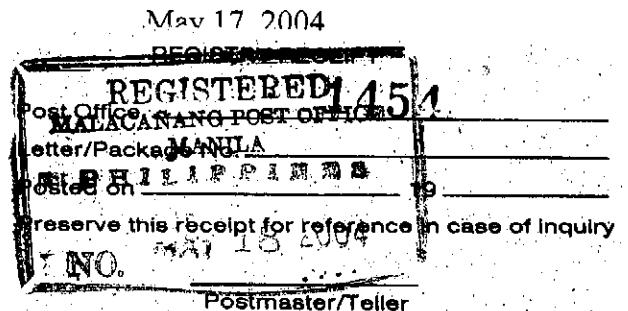


REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 068-2004

MR. ROMULO C. RABANOZ
Municipal Budget Officer
Municipality of Monte Vista
Province of Compostela Valley



Re : Procurement of Medicines
Procurement, in particular, Direct Contracting

Dear Mr. Rabanoz:

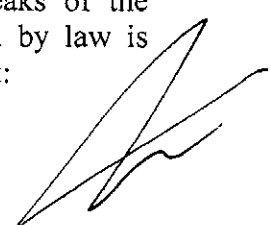
This refers to your letter dated March 25, 2004, forwarded to our office on April 16, 2004, requesting for assistance to resolve the following issues, to wit:

1. Whether or not the Municipality of Monte Vista ("The Municipality") may procure Medicines using the Alternative Methods of Procurement, in particular, Direct Contracting under Section 50 (c) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184");
2. Whether or not it is mandatory for the Bids and Awards Committee ("BAC") to recommend the award of contract to the head of the procuring entity in the Alternative Methods of Procurement;
3. Whether or not the Municipality may be allowed to specify brand names in the said procurement of Medicines.

These issues were raised in connection with the procurement of Medicines for the program "Botica Sa Barangay" and for medical supplies in the rural health units of the Municipality.

Direct Contracting under the IRR-A of 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 such alternative methods allowed by law is Direct Contracting as provided under Section 50 of the IRR-A of R.A. 9184, to wit:



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

x x x x

- 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 exclusiveness 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 all be present before the procuring entity may resort to this alternative method of procurement.

Taking into consideration that medicines are essential necessities of health, it is a given fact that medicines are widely and commonly available. Hence, the procurement of medicines does not necessarily call for an exclusive dealer or manufacturer. As such, the first condition as aforementioned, which is the exclusiveness of dealer or manufacturer is already lacking.

Since not all the conditions prescribed under the aforementioned provision are present, we believe that the Municipality should procure the needed medicines for the aforesaid project through public bidding and not through Direct Contracting under Section 50 (c) of the IRR-A of R.A. 9184.

Duty of the BAC to Recommend the Award of Contracts to the Head of the Procuring Entity

Under Section 12.1 of the IRR-A of R.A. 9184, one of the responsibilities entrusted to the BAC is to recommend the award of contracts to the head of the procuring entity or his duly authorized representative. However, this responsibility is performed by the BAC in cases where the agency procures through competitive bidding or under the alternative methods of procurement where public bidding procedures are required to be adopted, such as **Limited Source Bidding** under Section 49 of the IRR-A of R.A. 9184, and **Negotiated Procurement** under Section 53 (a) and (b) of the same rules.

On the other hand, with respect to those alternative methods of procurement where the public bidding procedures are not mandated to be undertaken, such as, **Direct Contracting, Repeat Order and Shopping**, under Sections 50, 51 and 52 of the IRR-A of R.A. 9184, respectively, there is no need for the BAC to perform such function. Be that as it may, it must be noted that such alternative methods of procurement should be resorted to only upon recommendation of the BAC to the head of the procuring entity and upon determination that any of the exceptional circumstances mentioned in the IRR-A of R.A. 9184 justifying the use of such alternative methods of procurement is present.

Prohibition on Reference to Brand Names

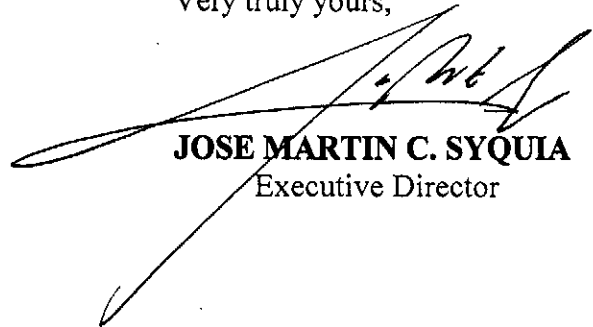
Section 18 of R.A. 9184 and its IRR-A, is clear on this point:

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)

Thus, we believe that the aforequoted prohibitory rule should be complied with.

Anent all the foregoing, 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