

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. 86-2004

June 18, 2004

HON. ALEXANDER A. PADILLA
Undersecretary
Department of Health
2/F Bldg. 1 San Lazaro Compound,
Sta. Cruz, 1003 Manila

Re : Request for clarification on Section 53, Negotiated Procurement and Section 46, Lease Contracts, of the Implementing Rules and Regulations Part A of Republic Act No. 9184

Dear Undersecretary Padilla:

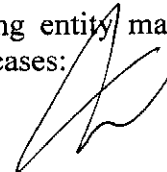
This refers to your letter dated May 25, 2004, which we received on June 2, 2004 addressed to Honorable Emilia T. Boncodin, Chairperson of the Government Procurement Policy Board (GPPB), requesting for clarification on the following issues:

1. Whether or not consultancy contracts may be concluded with other government agencies through negotiated procurement under Section 53(e) of the Implementing Rules and Regulations (IRR-A) of Republic Act No. 9184 (R.A. 9184); and
2. Whether or not Section 46 of R.A. 9184 and its IRR-A, which governs lease of computers, communication, information technology and other equipments, is applicable to medical equipments as well.

We wish to inform you that your concerns were discussed during the 4th GPPB meeting held on June 10, 2004 at Unit 1103, The Taipan Place, Emerald Avenue, Ortigas Center, Pasig City, wherein the GPPB resolved the foregoing issues as follows:

Consultancy Services among Government Agencies

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
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.

As expressly stated in the above-quoted provisions, a negotiated contract with other government agency is allowed if the procurement involves purchases of goods. Accordingly, the Department of Health (DOH) cannot avail of Section 53(e) of the IRR-A of R.A. 9184 considering that it seeks to procure consulting services, and not goods, from other government agency. It must be noted that R.A. 9184 and its IRR-A prescribe competitive bidding as the general mode of procurement and the alternative methods should be resorted to only in highly exceptional cases, hence, the provisions in the law allowing such modes must be strictly construed.

Lease of Medical Equipment subject to Public Bidding

Section 46 of R.A. 9184 and its IRR-A specifies that lease of construction, office, communication and information technology equipments shall be subject to the same public bidding procedures and processes prescribed therein:

Considering that public bidding is the general mode of procurement, all lease contracts should also be subject thereto. As such, even if medical equipments are not specifically mentioned in Section 46 of R.A. 9184 and its IRR-A, the lease of such equipments should be subject to the same rules for competitive bidding provided in R.A. 9184 and its IRR-A.

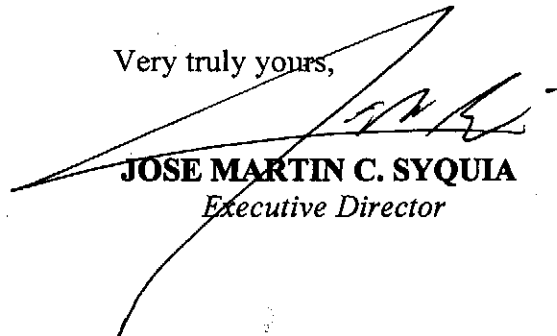
With regard to the last issue which has been raised in your letter reiterating your request for a grant of authority to open a trust fund in relation to the payment of honoraria to selected Health personnel involved in procurement activities, we wish to inform you that we have referred this matter to the proper office of the Department of Budget and Management.

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."

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.

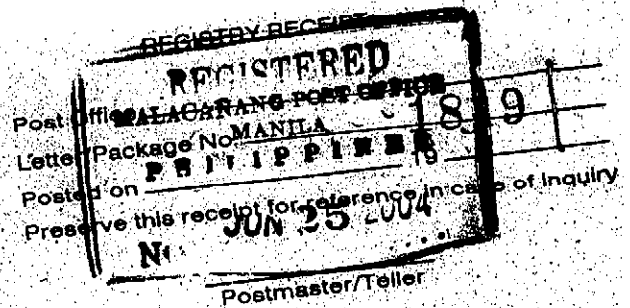
We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

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June 2, 2004

HON. ALEXANDER A. PADILLA
Undersecretary
Department of Health
2/F Bldg. I, San Lazaro Compound,
Sta. Cruz, Manila

Dear Usec Padilla:

We are writing to acknowledge receipt of your letter, dated May 25, 2004, addressed to the Honorable Secretary Emilia T. Boncodin, Chairperson of the Government Procurement Policy Board (GPPB), requesting for guidance and clarification on the provisions of Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically Sections 53 and 46 thereof. Moreover, we note your request for a grant of authority to open a trust fund for the Department of Health for the grant of honoraria to selected personnel involved in its procurement activities which will be addressed by the appropriate office at the Department of Budget and Management.

We wish to inform your office that we shall respond to the request of your Department at the earliest possible opportunity or raise the same to the GPPB for appropriate resolution should referral thereto becomes necessary.

In the meantime, we will coordinate with your office regarding additional information that may be required for a proper presentation of facts to the GPPB in their formulation of a resolution. In line with this, we request a point person with whom we can work with to address your concerns.

We will be calling your office within the week to finalize arrangements.

Very truly yours,


JOSE MARTIN C. SYQUIA
Executive Director

REGISTRY RECEIPT

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