

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. 097-2004**

July 19, 2004

**COL. CIPRIANO D. GUNDAO**  
Commanding Officer  
Air Logistics and Support Command  
Philippine Air Force (PAF) Procurement Center  
Col. Jesus Villamor Airbase, Pasay City

**Re : Applicability of Section 54.2 (b) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184") on Procurement Activities undertaken through Negotiated Procurement under Sections 53 (a) and (b)**

Dear Col. Gundao:

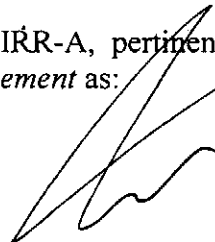
This refers to your letter dated June 24, 2004, which we received on June 25, 2004, requesting for a legal opinion on a single issue, to wit:

Whether the requirements stated in Section 54.2 (b) of the IRR-A of R.A. 9184 should be strictly followed or the procuring entity has the leeway to directly negotiate a contract with a technically, legally and financially capable supplier.

This issue was raised in connection with the procurement of Thirty Two (32) line items of C-130 aircraft spares and components by the Single Bids and Awards Committee (SBAC) of the Armed Forces of the Philippines (AFP).

**Strict Interpretation of Section 54.2 (b) of the IRR-A of R.A. 9184 vis-à-vis the Common Definition of the term "Negotiate"**

Section 53 of R.A. 9184 and its IRR-A, pertinent portions of which are quoted hereunder, clearly define *Negotiated Procurement* as:



*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:

- a) Where there has been a failure of public bidding for the second time as provided in Section 35 of the Act and this IRR-A;
- b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from 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 facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security areas, through the AFP;

X X X X

In connection with this, Section 54.2 (b) of the same IRR-A further provides for the terms and conditions in undertaking Negotiated Procurement for cases falling under the aforementioned provisions, to wit:

For items (a) and (b) of Section 53, in the case of goods and infrastructure projects, the procuring entity shall draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed.

As can be gleaned from the aforesaid provisions, the legal definition of Negotiated Procurement, the specific circumstances when the said alternative method may be resorted to, as well as the terms, conditions and limitations in applying Negotiated Procurement are emphatically and categorically provided in R.A. 9184 and its IRR-A. Moreover, a reading of the aforementioned provisions would certainly express the mandatory and obligatory force of the procurement reforms contained therein. As such, we cannot agree with the idea that the terms and conditions specified under Section 54.2 (b) of the IRR-A of R.A. 9184 may be dispensed with and the procuring entity has the leeway to directly negotiate a contract with any technically, legally and financially capable supplier they prefer.

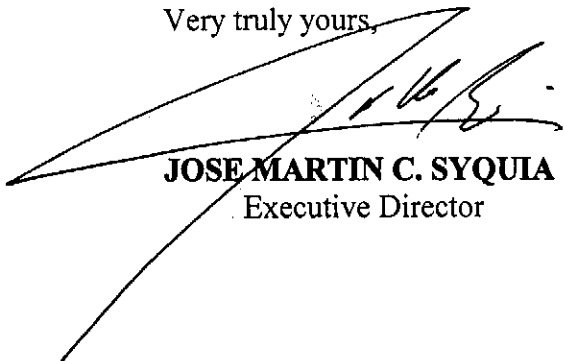
Likewise, we do not share the observation of the PAF that the commonly-accepted definition of "negotiate" appears to be contradictory with the requirement of the conduct of public bidding procedures under Section 54.2 (b) for cases of Negotiated Procurement falling under Sections 53 (a) and (b) of the IRR-A of R.A. 9184. Under the Rules on Statutory Construction, "the natural and ordinary meaning of words will however be disregarded in favor of a statutory meaning or a well-established technical meaning, or when it is plain and clear from the statute or from the context of the words within the statute that a different meaning was intended, or when to observe the commonly accepted meaning will defeat the

defeat the manifest intention of the legislature or result in absurdity.”<sup>1</sup> Indeed, it is an old and well-established maxim that words ought to be more subservient to the intent, and not the intent to the words.<sup>2</sup>

Based on the foregoing, we are of the opinion that the requirements under Section 54.2 (b) in connection with Sections 53 (a) and (b) of the IRR-A, being mandatory provisions, should be strictly followed and complied with.

We trust that this clarifies matters.

Very truly yours,



**JOSE MARTIN C. SYQUIA**  
Executive Director

Gse/gppb-tso

**MANILA POST OFFICE**  
MANILA  
PHILIPPINES, 024  
Letter/Package No. \_\_\_\_\_  
Posted on **JUL 21** 2004 19  
Please serve this receipt for reference in case of inquiry  
\_\_\_\_\_  
Postmaster/Teller

<sup>1</sup> 82 C.J.S. Sec. 329, pp. 644, 645.

<sup>2</sup> Alcantara, *Statutes*, 1997 Ed. p. 58 citing *Bailey vs. Abington*, 201 Ark. 1072. 148 SW (2<sup>nd</sup>) 176.

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*

---

June 28, 2004

**COL. CIPRIANO D. GUNDAO**  
Commanding Officer  
Air Logistics and Support Command  
Philippine Air Force Procurement Center  
Col. Jesus Villamor Air Base, Pasay City

Dear Col. Gundao:

This refers to your letter dated June 24, 2004, which we received on June 25, 2004, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically the procedure on the conduct of negotiated procurement as an alternative method of procurement.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,

  
**ATTY. REYNALDO H. BICOL JR.**  
Procurement Management Officer V