

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF FINANCE  
**BUREAU OF INTERNAL REVENUE**  
Quezon City

August 1, 2005

**REVENUE MEMORANDUM CIRCULAR NO. 37-2005**

**SUBJECT: Publishing the full text of NPM No. 067-2004 by the Executive Director of Government Procurement Policy Board (GPPB) dated May 13, 2004 entitled Procurement of Licenses of Software Products through Direct Contracting as an Alternative Method of Procurement**

**TO : All Internal Revenue Officers, Employees and Others Concerned**

---

For the information and guidance of all internal revenue officers, employees and others concerned, quoted hereunder is the full text of NPM No. 067-2004 by the Executive Director of Government Procurement Policy Board (GPPB) dated May 13, 2004:

“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. 067-2004**

May 13, 2004

**Hon. MILAGROS V. REGALADO**  
Assistant Commissioner – Legal Service  
Bureau of Internal Revenue  
Agham Road, Diliman, Quezon City

Re : **Procurement of Licenses of Software Products through Direct Contracting as an Alternative Method of Procurement**

Dear Asst. Comm. Regalado:

This refers to your letter dated April 21, 2004 addressed to Secretary Emilia T. Boncodin, Chairperson of the Government Procurement Policy Board (“GPPB”), which was referred to our office on April 30, 2004, requesting for confirmation whether the Bureau of Internal Revenue (“BIR”) may procure through “Direct Contracting” the licenses for SSA Software Products and ACL Software Products considering that those licenses are sold only by exclusive distributors. Clarification is also being sought by your office on the proper procedure for Direct Contracting as an alternative method of procurement, that is whether the BIR may simply ask for a price quotation from the exclusive distributors abroad without negotiation in the Philippines.

### **Direct Contracting as an Alternative Method of Procurement**

Undoubtedly, goods that are sold by an exclusive dealer or manufacturer may be procured through Direct Contracting as an alternative method of procurement, under Section 50 of Republic Act No. 9184 (“R.A. 9184”) and its Implementing Rules and Regulations (“IRR-A”), to wit:

SEC. 50. **Direct Contracting.** – Direct Contracting may be resorted to only in any of the following conditions:

- a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,
- 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.** (Emphasis supplied)

However, while Section 50 of R.A. 9184 and its IRR-A allows a procuring entity to directly purchase goods from an exclusive dealer or manufacturer, this is to be done with utmost prudence and judiciousness. Under the law, procuring entities are mandated to adopt public bidding as the general mode of procurement and alternative methods are resorted to only in highly exceptional cases set forth in Sections 48-54 of R.A. 9184 and its IRR-A.<sup>1</sup> Moreover, the procuring entity shall ensure that the most advantageous price for the Government is obtained.<sup>2</sup>

---

<sup>1</sup> Section 10 of R.A. 9184 and its IRR-A; Section 48.2 of the IRR-A of R.A. 9184.

<sup>2</sup> Section 48.1, IRR-A of R.A. 9184.

Accordingly, before resorting to said alternative method, your Bids and Awards Committee (“BAC”) shall prudently determine that there is no existing substitute for said product in the market that may be procured at more advantageous terms to the Government. In this connection, it is suggested that the BIR’s BAC first conduct a survey of the software industry, prior to the commencement of the procurement process, to determine the availability of substitutes in the supply market, and finally to confirm the exclusivity of the distributors to the licenses for the softwares.

If the foregoing conditions are satisfied, such that it is more advantageous to continue using the software and the exclusivity of dealership is confirmed, then the BIR may resort to Direct Contracting in the procurement of licenses for the software products. As to the methodology on how to conduct said alternative method, we are providing you with the following guidelines:

- 1) In the Annual Procurement Plan (“APP”), the BAC shall include a recommendation to the Head of the Procuring Entity on the use of Direct Contracting for the particular procurement.
- 2) The Head of the Procuring Entity shall approve the same.
- 3) The BAC through the Technical Working Group (“TWG”) and the BAC Secretariat, shall prepare the Request for Quotation, Technical Specifications and Draft Contract in accordance with the procedures laid down in the IRR-A of R.A. 9184.
- 4) The BAC, through the Secretariat, shall identify the exclusive distributor from whom the goods will be procured.
- 5) The BAC, through the Secretariat, shall post the procurement activity in:
  - 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
- 6) The BAC shall send the Request for Quotation to the exclusive distributor. If necessary, negotiations may be conducted to ensure that the Government is able to procure the goods at the most advantageous terms. Furthermore, such negotiations may be conducted through correspondence, if the exclusive distributor is based abroad.
- 7) The BAC shall then proceed with Contract Award, Signing and Approval in accordance with R.A. 9184 and its IRR-A.

With the foregoing elucidations, we hope that our opinion has provided the BIR with the needed information on the procurement of goods through Direct Contracting under Section 50 of R.A. 9184 and its IRR-A.

Please note 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,

(SGD) **JOSE MARTIN SYQUIA**  
Executive Director "

All revenue officials and employees are enjoined to give this Circular as wide a publicity as possible.

(Original Signed)  
**NORMA L. LIPANA**  
OIC – Deputy Commissioner  
Resource Management Group