



Department — Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 42-2012

25 April 2012

MR. FRANCIS L. ROMUALDEZ

President

CRESER PRECISION SYSTEMS, INC.

No. 14 Don Jose Street, Cubao,

Quezon City

Re: Direct Contracting (Domestically produced patented inventions)

Dear Mr. Romualdez:

This is in response to your letter dated 12 April 2012 seeking our opinion on Direct Contracting for domestically produced patented inventions in relation to Section 50 of Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

It is represented that Creser Precision Systems, Inc. (CPSI) is a defense manufacturer for thirty four (34) years and a supplier of defense ammunitions of the Armed Forces of the Philippines through direct contracting. It is further represented that CPSI has been granted several local and international awards for its ammunition inventions, five (5) of which have patents duly registered before the Intellectual Property Office. Likewise, CPSI represents to be a member of the Filipino Investors Society which gives inventors market preference in the sale of its products domestically. It is, therefore, in this context that you are seeking guidance on the provisions of Direct Contracting under Section 50 of RA 9184 and its IRR.

Please note that CPSI, being a domestic manufacturer of patented ammunitions, is not being prevented, but in fact encouraged, to participate in the procurement process of various agencies of government. This is consistent with the policy of the government to give preference to the procurement of materials and supplies, produced, made, and manufactured in the Philippines that meet the specified or desired quality in accordance with the provisions of existing laws and treaties or international agreements¹.

The mere fact, however, that the government gives preference to the procurement of domestically produced and manufactured materials and supplies, does not sanction the immediate availment of the alternative methods of procurement such as direct contracting, in lieu of competitive bidding.

Under RA 9184, the procuring entity shall adopt public bidding as the primary mode of procurement. Alternative methods of procurement are resorted to only in highly exceptional cases set forth in Sections 48-54 of RA 9184 and its IRR². Moreover, in all

¹ Article XII, Section 12 of the 1987 Philippine Constitution, Commonwealth Act No. 138 (Flag Law), as amended, and Administrative Order No. 227, Series of 2008.

² Section 10 of R.A. 9184 and its IRR; Section 48.2 of the IRR of R.A. 9184.

instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained³.

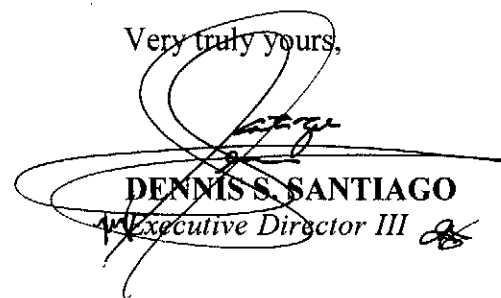
As discussed in a previous opinion⁴, in order to justify the need to procure through direct contracting, the Bids and Awards Committee (BAC) should conduct a survey of the industry and determine the supply source. The survey should confirm the exclusivity of the source of goods to be procured. In all cases where direct contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. In addition, specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements⁵.

Moreover, the procuring entity must justify the necessity for an item that may only be procured through direct contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms (Section 4, Part 2, Volume 2, Manual). It is only after the BAC has conducted its survey and determined that one of the conditions under Section 50 of RA 9184 is present that proper recommendation to the HOPE for the use of Direct Contracting⁶ may be made.

Based on the foregoing, the fact alone that CPSI is a domestic manufacturer of patented ammunitions does not sanction the immediate resort to procurement through Direct Contracting, in lieu of Competitive Bidding. Under the rules, the procuring entity must first justify the necessity for purchasing CPSI's patented ammunitions and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms, before it may decide to procure through Direct Contracting.

We hope that our advice provided sufficient guidance on the matter. Should you have further questions, please do not hesitate to contact our office.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

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³ Section 48.1 of the IRR of R.A. 9184.

⁴ GPPB-TSO NPM NO. 029-2007, 30 July 2007.

⁵ Section 12 of R.A. 9184.

⁶ Section 18 of R.A. 9184.