



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

NPM No. 83-2013

30 October 2013

MR. JUNIO M. RAGRAGIO

General Manager

PHILIPPINE NATIONAL RAILWAYS (PNR)

PNR Executive Building, Mayhaligue Street,
Tondo, Manila

Re : Direct Contracting

Dear Mr. Ragragio:

We write in reference to your letter dated 3 July 2013 requesting for guidance on whether PNR can proceed with the procurement of overhauling and rehabilitation services for its major trains and locomotives through Direct Contracting under Section 50 of the Revised Implementing Rules and Regulations (IRR) of Republic Act No. (RA) 9184.

As represented, the PNR's planned rehabilitation/overhauling of its Rolling Stocks do not only include the supply of parts and materials, but includes the actual execution of the repair/overhauling works. In this connection, PNR requested the assistance of Hyundai – Rotem and General Electric in the assessment of the train sets and locomotives and the possibility of engaging the same companies to undertake the repair/overhauling contract, being the manufacturers of the subject train sets and locomotives proposed to be rehabilitated and overhauled. However, both companies manifested that they cannot singularly enter into a contract with PNR, and would instead have to partner with a local company that they will fully support technically to undertake the repair/overhauling. It is in this context that you are inquiring on whether Direct Contracting may be utilized as the procurement modality in the engagement of the local company.

Section 50 of the IRR of RA 9184 allows the use of Direct Contracting for the procurement of tangible goods as can be inferred from the terms used in the conditions for its applicability. We note that PNR's main objective for the contract is the repair and/or overhauling of the identified train sets and locomotives. Ancillary to the service is the acquisition of parts and materials, as such, the procurement activity pertains more to procurement of services for repair/overhauling.

Under this condition, PNR cannot automatically resort to Direct Contracting as it has to first provide sufficient justification and proof that apart from the fact that the parts and materials to be procured are sold by an exclusive manufacturer or dealer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms for the government, it has to show that the repair and overhauling

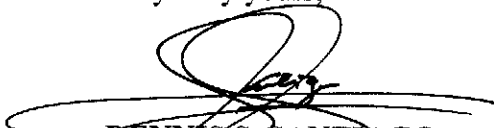
service for the train sets and locomotives can be undertaken only by the identified service provider and no one else.

Considering that the actual repair and overhauling works will be done directly by a local company that will still be identified by the manufacturers as their partner, this partnership arrangement has not yet been finalized at this point, and thus, opening the opportunity to industry players by reason of competitive bidding will serve to increase the pool of potential partners for the manufacturers, instead of limiting it to only one.

In view of the foregoing, we wish to express our view that PNR cannot enter into a contract for the repair/overhauling of the identified train sets and locomotives using Direct Contracting. Instead, it is respectfully suggested that Public or Competitive Bidding be conducted for the proposed contract.

We hope that this opinion of the GPPB-TSO provided sufficient guidance on the matter. Note that this is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have other concerns, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III