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NPM No. 58-2009

28 October 2009

JACINTO MAGTANONG WUI JACINTO ESGUERRA & UY LAW OFFICES
Unit 903, Rufino Bldg. Rufino Plaza
6784 Ayala Avenue cor. Rufino Street
Legaspi Village, Makati City

Attn : ATTY. OLIVER O. MAGTANONG
Re : ODA-funded Procurement/Direct Contracting

Sir:

We respond to your letter dated 24 September 2009, as supplemented by your letter (with attachments) dated 21 October 2009, soliciting our legal opinion on the propriety of resorting to direct contracting for the procurement by the Department of Transportation and Communication (DOTC) of seven (7) units of Model EC 145 multi-purpose helicopters for the Philippine Coast Guard (PCG).

Based on your representations and the supporting documents submitted, the following information were gathered:

- 1) The subject procurement of the DOTC shall be funded up to seventy percent thereof (70%) by CALYON Germany, through its Export Credit Facility, the Euler-Hermes Kreditversicherung AG ("Hermes"), under a tied-commercial loan agreement, while the remaining thirty percent (30%) shall be for the account of the PCG;
- 2) The proposed direct contracting is to be undertaken with Alecon Corporation, which serves as the Philippine resident agent of Eurocopter Deutschland GmbH, Germany (Eurocopter);
- 3) Eurocopter, as favorably indorsed by the German Embassy, is the only company producing helicopters in Germany, and its Helicopter EC 145 has been chosen by the PCG as satisfying the agency's air requirements; and
- 4) Justifications for the urgency of the proposed procurement are two-fold, viz: (1) recent maritime disasters in the country; and (2) forthcoming ban on disbursement of public funds during the election period.

At the outset, we would like to inform you that the Government Procurement Policy Board (GPPB) is primarily an administrative body imbued with quasi-legislative or rule-making power¹ to determine policy directions in the area of public procurement. It has no jurisdiction to rule on specific issues raised by government agencies with regard to their procurement processes and activities considering that it has no *quasi-judicial*² functions under Republic Act 9184 (RA 9184) and its Implementing Rules and Regulations (IRR). As such, it is not in a position to fully understand and be held accountable for an agency's procurement decisions. Thus, the determination of the legality and/or propriety of the actions and decisions of the Bids and Awards Committee (BAC) or the procuring entity is not within the express mandate of this Office.

Nonetheless, for guidance purposes, we would like to state, that, under Section 10 of the IRR of R.A. 9184, it is mandated that all procurement shall be done through public bidding. The procuring entity may, in order to promote economy and efficiency, and whenever justified by the conditions provided in the Act, resort to any of the alternative methods, such as direct contracting, subject to the approval of the Head of the Procuring Entity (HOPE). In other words, the determination and recommendation to use any of the alternative methods of procurement befalls upon the BAC³ and not the GPPB, subject to the abovementioned requirements.

Relative thereto, we would also like to point out that, in cases where the HOPE has made a determination that a government contract involving an amount of at least Five Hundred Million Pesos (PhP 500,000,000.00) or more falls under any of the exceptions from public bidding, the HOPE, before proceeding therewith, shall first obtain GPPB approval that said proposed procurement falls within the exceptions and is appropriate.⁴

Furthermore, we posit that the applicability of R.A. 9184 and its IRR to the subject DOTC procurement is anchored on your representation that government/public funds will be used (i.e. PCG funds and GOP loan thru CALYON Germany). Hence, resort to public, competitive bidding, as the default mode of procurement espoused by RA 9184, should be observed as a general rule.

Corrollarily, the fact that ODA is being negotiated to fund the project does not, per se, take it from the ambit of RA 9184. We note that Section 4 of R.A. 9184, in relation to recent Supreme Court rulings⁵, mandates due deference to treaties, international or executive agreements, which prescribe a different set of procurement guidelines, under the principle of *pacta sunt servanda*. However, in the absence of any clear, categorical basis that the proposed commercial loan between the GOP (thru

¹ Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

² Quasi-judicial is defined as a term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848 [1988]).

³ Section 12.1, IRR of R.A. 9184.

⁴ Section 4, E.O. 423 dated 30 April 2005, as amended.

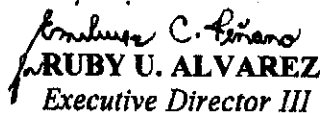
⁵ *Abaya vs. Ebdane* (G.R. No. 167919, 14 February 2007); *Department of Budget and Management Procurement Service vs. Kolonwel Trading* (G.R. No. 175608, 8 June 2007)

the DOF) and CALYON Germany partakes of the nature of an international or executive agreement, and that such agreement specifically and expressly provides the use of foreign government or foreign or international financing institution procurement procedures and guidelines, the IRR of RA 9184 should still apply.⁶

Lastly, inasmuch as the determination of the conditions for the existence, validity, legality and effectiveness of a treaty or an international or executive agreement is not within the mandate of the GPPB, we encourage you to refer the matter to the Department of Justice and the Department of Foreign Affairs, for appropriate action.

We trust that this clarifies matters. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,


for RUBY U. ALVAREZ
Executive Director III

⁶ Section 4.3, IRR of R.A. 9184

TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City, Philippines 1605

Atty. Alyce,
Pls. see the Revised Reply I've made.
FN: NPM No. 58-2009-JMU Law. ODA-funded. Direct Contracting

27 October 2009 ^{11:24 AM} 10/29/09
Ma'am Emnie,
for review pl.
FN: Magtanong. 9.24.2009.
Thank you.
Alyce

JACINTO MAGTANONG WUI JACINTO ESGUERRA & UY LAW OFFICES
Unit 903, Rufino Bldg. Rufino Plaza
6784 Ayala Avenue cor. Rufino Street
Legaspi Village, Makati City

Attn : ATTY. OLIVER O. MAGTANONG

Re : ODA-funded Procurement of Helicopters

Sir:

We respond to your letter dated 24 September 2009 soliciting our legal opinion on whether the Department of Transportation and Communication (DOTC) can legally procure seven (7) units of Model EC 145 multi-purpose helicopters for the Philippine Coast Guard through Direct Contracting from Alecon Corporation. Said procurement shall be funded by Official Development Assistance from Calyon Germany and to be guaranteed by Euler-Hermes Kreditversicherung AG.

At the outset, we would like to inform you that the Government Procurement Policy Board (GPPB) is primarily an administrative body imbued with quasi-legislative or rule-making power¹ to determine policy directions in the area of public procurement. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process considering that it has no *quasi-judicial*² functions under Republic Act 9184 and its Implementing Rules and Regulations (IRR). Thus, the determination of the legality and/or propriety of the actions and decisions of the Bids and Awards Committee (BAC) is not within the expressed mandate of this Office.

We would like to state, nonetheless, that under Section 10 of the IRR of R.A. 9184 it is mandated that all procurement shall be done through public bidding. The procuring entity may, in order to promote economy and efficiency, and whenever justified by the conditions provided in the Act resort to any of the alternative methods subject to the approval of the Head of the Procuring Entity (HOPE). In other words, the determination and recommendation to use ^{of} alternative methods of procurement befalls upon the BAC³ and not the GPPB, subject to the abovementioned requirements.

¹ Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

² Quasi-judicial is defined as a term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p. 216 citing *Lupangco v. CA*, 160 SCRA 848 [1988]).

³ Section 12.1, IRR of R.A. 9184.

Finally, we acknowledge receipt of your subsequent letter⁴ dated 21 October 2009. Inasmuch as the determination of the existence of a treaty, or international or executive agreement is within the mandate of the Department of Justice and/or the Department of Foreign Affairs, and insofar as the GPPB was not furnished a copy of any agreement satisfying the conditions that may warrant exemption⁵ from R.A. 9184, we would like to inform you that pursuant to Executive Order 423, approval of the GPPB in case of procurement through alternative methods with an Approved Budget for the Contract costing above Five Hundred Million Pesos (Php 500,000.00) shall be imperative.

We trust this clarifies matters. Should you have additional concerns, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

⁴ With attachments.

⁵ Under Section 4 of the IRR of R.A. 9184.

Atty. Uy
Pls. draft response as discussed

JACINTO MAGTANONG WUI JACINTO ESGUERRA & UY
Law Offices (JMU Law)

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OLIVER ONGOCO MAGTANONG
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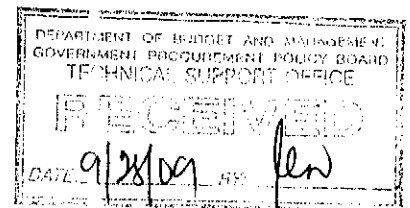
Enrico,
Pls. handle. Sign in
my behalf.
9/29/09

September 24, 2009

Atty. RUBY U. ALVAREZ
Executive Director

GOVERNMENT PROCUREMENT POLICY BOARD
-TECHNICAL SUPPORT OFFICE (GPPB-TSO)

Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road (Emerald Street)
Ortigas Center, Pasig City



Attention: The Head, Legal Department

Subject: Query (Request for Legal Opinion) on ODA-funded government procurement of helicopters

Dear Atty. Alvarez:

On behalf of our client, **ALECON CORPORATION** ("Alecon"), may we request your good office to render a legal opinion on direct contracting as a method of government procurement in lieu of competitive bidding as a default mode.

Alecon is a corporation established and existing under Philippine laws with business address at Unit 93 Legaspi Suites, 178 Salcedo Street, Legaspi Village, Makati City 1200. It serves as the Philippine resident agent of Eurocopter Deutschland GmbH, Germany ("Eurocopter"), a foreign corporation, which exclusively supplies multi-purpose helicopters with Model EC 145 in the world market.

The Department of Transportation and Communications ("DOTC") is planning to acquire seven (7) units of said helicopter for the Philippine Coast Guard primarily for the latter's search and rescue operations involving maritime transportation. Said procurement shall be funded by official development assistance (ODA) from CALYON Germany ("Calyon") and to be guaranteed by

exception is reiterated in **Section 4.2 of said IRR**, which states even further that: “In case of conflict between the terms of the . . . Executive Agreement and this IRR, the former shall prevail.”

“Not requiring legislative ratification” (**par. 1, Sec. 5, IRR**), an “**executive agreement**” refers to “a contract or understanding, regardless of nomenclature, entered into between the Government of the Philippines (GOP) and another government or foreign or international financing institution, in written form and governed by international law, whether embodied in a single instrument or in two (2) or more related instruments” (**Sec. 5, par. v, IRR**).

Usually contained in an executive agreement between the governments of the Philippines and a foreign country, an “**official development assistance**” (ODA) is a loan, or loan and grant, having all of the following criteria as enumerated in the **Official Development Assistance Act of 1996 (R. A. No. 8182, as amended by R.A. 8555)**

- (a) It must be administered with the objective of promoting sustainable social and economic development and welfare of the Philippines;
- (b) It must be contracted with governments of foreign countries with whom the Philippines has diplomatic, trade relations or bilateral agreements or which are members of the United Nations, their agencies and international or multilateral lending institutions;
- (c) There are no available comparable financial instruments in the capital market; and
- (d) It must contain a grant element of at least twenty-five percent (25%). Grant element under this Act is the reduction enjoyed by the borrower whenever the debt service payments which shall include both principal and interest and expressed at their present values discounted at ten percent (10%) are less than the face value of the loan or loan and grant. The grant element of a loan or loan and grant is computed at the ratio of (i) the difference between the face value of the loan or loan and grant and the debt service payments to (ii) the face value of the loan or loan and grant.

More importantly, said exemption of an ODA-funded government procurement from the coverage or application of **RA No. 9184** is expressly supported by **Sec. 4.4 of the IRR**, which clearly states that:

- 4.4. This IRR shall not apply to the following activities:

exception to that general rule on competitive bidding, provided that all conditions stated therein shall be complied with.

As a rule under **Sec. 10 of both R.A. No. 9184 and its IRR**, all procurement shall be done through competitive bidding (as defined under **Sec. 5 (e) of R.A. No. 9184 & Sec. 5 (h) of its IRR**) except as provided in for **Article XVI of R.A. No. 9184 and Rule XVI of its IRR**, which both refer to "alternative methods of government procurement".

Subject to the prior approval of the head of the procuring entity (HOPE), and whenever justified by the conditions provided in R.A. No. 9184, the procuring entity may, in order to promote economy and efficiency, resort to any of the alternative methods of procurement provided in said law and rules. In all instances, the procuring entity shall ensure that the most advantageous price for the government is obtained. (Sec. 48 of R.A. No. 9184 & Sec. 48.1 of its IRR)

One of such alternative methods of government procurement is "direct contracting" under **Sec. 48 (b) of R.A. No. 9184 and Sec. 50 of its IRR**. Otherwise known as "single source procurement", it does not require elaborate bidding documents as the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations.

In other words, this alternative method is especially applicable when a particular good to be acquired by the government under certain specifications is exclusively sold by just one source/supplier or produced by just one manufacturer, thereby rendering a competitive bidding (which is open to all qualified bidders), or even a limited source bidding (which is confined to a set of pre-selected suppliers) "a mere exercise in futility".

Direct contracting may be resorted to by a procuring entity such as the DOTC under ANY of the following conditions (**Sec. 50, RA No. 9184; Sec. 50, IRR**):

- 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 (**exclusivity of source**);
- b) When the procurement of critical plant components from a specific supplier is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract (**guaranteed performance**); or

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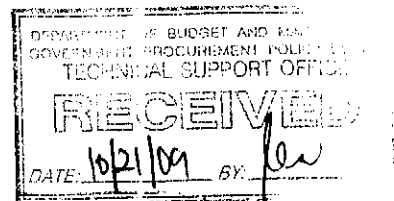
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 Website: www.jmulawoffices.com

October 21, 2009

Hon. EMILUISA C. PEÑANO
 Executive Director II

GOVERNMENT PROCUREMENT POLICY BOARD -TECHNICAL SUPPORT OFFICE (GPPB-TSO)

Unit 2506, Raffles Corporate Center
 F. Ortigas Jr. Road (Emerald Street)
 Ortigas Center, Pasig City



Subject: Supporting Documents for Query (Request for Legal Opinion) on ODA-funded procurement by DOTC of helicopters for PCG

Dear Madam:

This is relative to your letter dated October 14, 2009 acknowledging receipt on September 28, 2009 of our letter dated September 24, 2009 on behalf of our client, **ALECON CORPORATION** ("Alecon"), requesting for clarification on various issues pertaining to the Official Development Assistance-funded procurement by the Department of the Transportation and Communications of seven (7) multi-purpose helicopters for the Philippine Coast Guard (PCG).

To assist your office in rendering a formal opinion, we have been instructed by Alecon to furnish you the following documents containing relevant facts:

1. **Memorandum dated April 8, 2009 of Adm. Wilfredo Tamayo of the PCG** - recommending to Hon. Thompson C. Lantion, DOTC Undersecretary for Maritime Transport, the inclusion of said project in the DOTC-MTPIP;
2. **Letter dated August 28, 2009 of DOTC Secretary Leandro R. Mendoza** - seeking approval by Hon. Augusto B. Santos, Acting

Secretary of the National Economic Development Authority, of the same project;

3. Indicative Summary of Terms and Conditions dated September 15, 2009;
4. Projected Drawdown and Amortization Schedule; and
5. Recommendation of the German Embassy dated October 12, 2009.

The urgency of the project is justified not only by the recent maritime disasters in our country but also the forthcoming ban on disbursement of public funds during the election period.

We firmly hope that the said formal opinion shall be rendered the soonest. Thank you for bearing with us.

Truly yours,

JMU Law

By:


OLIVER O. MAGTANONG





TANGGAPAN NG KOMANDANTE
(OFFICE OF THE COMMANDANT)
PUNONGHIMPILAN TANOD BAYBAYIN NG PILIPINAS
(HEADQUARTERS PHILIPPINE COAST GUARD)
139 25th Street, Port Area
Manila

MEMORANDUM FOR THE HONORABLE SECRETARY

Thru : **USEC THOMPSON C. LANTION**
Undersecretary for Maritime Transport

From : **COMMANDANT, PHILIPPINE COAST GUARD**

Subject : **ACQUISITION OF MULTI-PURPOSE HELICOPTERS**

Date : **APR 08 2009**

Action requested: Approval of the Honorable Secretary

The Philippine Coast Guard has embarked on a modest capability build-up that requires a mixed balance of surface and air assets. This is purposely to enable the Agency to effectively perform its mandated functions particularly in disaster response and law enforcement operations.

With the Agency's acquisition of eight (8) Tenix multi-purpose vessels and MOA with BFAR for the joint use of the latter's MCS vessels, the PCG now focuses its capability build-up efforts on the acquisition of air assets. Relative to this, the agency has received several proposals/offers from different aircraft manufacturers for its air asset requirements.

Prioritizing helicopters for its air assets, the Agency came up with a Circular of Requirements defining what would be the most appropriate type for its use. Eventually, Eurocopter's EC 145 helicopter has been chosen as having satisfied the Agency's requirements.

Eurocopter's commercial proposal covers a total of seven (7) helicopters based on the Agency's 15-yr Capability Development Plan and as detailed in its Aviation Group's Aircraft Acquisition Plan. The commercial proposal, among others, includes 5-yr Parts Supply, Technical Assistance, Detachable/Mission Equipment, and Training for Pilots and Crew.


The Financing Scheme of the Eurocopter's proposal details that the 70% of the helicopter cost and 100% loan, of the credit insurance premium will be financed by a near concessional loan, while the balance of the project financing will come from the

PCG. The financing scheme offers a loan of 100% 10-yr maturity inclusive of the 1.5 yr grace period and will carry a fixed interest rate of 1.5%

Delivery of seven (7) helicopters would take a total of 28 months from the time of receipt of down payment. The helicopters will be configured either fitted for or with Detachable Mission Equipment as required by the PCG.

The Feasibility Study for the acquisition of the multi-purpose helicopters and the whole commercial proposal package are herewith attached describing comprehensive justification for the project and detailed explanation of the offer, respectively.

In view of the urgent need of the Philippine Coast Guard particularly in capacity building measures in the conduct of maritime search and rescue and maritime law enforcement operations, and in time with the enactment of the Baseline Law, the PCG wishes to reiterate the inclusion of the project in the DOTC MTPIP.


WILFREDO D TAMAYO
ADM

PCG: 



Republic of the Philippines
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
OFFICE OF THE SECRETARY

28 August 2009

HON. AUGUSTO B. SANTOS

Acting Secretary

National Economic and Development Authority

NEDA sa Pasig

Blessed Jose Maria Escriva St.,

Pasig City, Metro-Manila 1600

ELIAS
 09-17-09
 P.M.

Dear Sec. Santos:

The Philippine Coast Guard (PCG) is mandated to promote safety of lives and property at sea, safeguard the marine environment, promote maritime security and assist in the enforcement of maritime laws within our territorial waters,

To effectively carry out its mandate, the PCG requires competent personnel, responsive organizational structure, and adequate infrastructure, support facilities/logistics, and a responsive fleet of vessels and aircrafts.

With the PCG's acquisition of search and rescue vessels, the number of casualties has generally decreased as response time has been improved. However, it is a known fact that vessels take several hours to reach the disaster area. The number of casualties would be much less if response time was shorter, which only helicopters could provide. Further, hoisting and laying of booms to contain oil spills would be much faster and more efficient with the aid of helicopters.

It is in this light and the PCG's desire to continuously and effectively fulfill its mandated functions that the procurement of additional assets, i.e., helicopters, is being proposed.

The proposed project involves the procurement of seven (7) Maritime Disaster Response (MDR) helicopters, the objective of which is to strengthen/enhance not only the Search and Rescue capabilities of its Air Group, but also its oil spill response capability.

The helicopters shall be deployed in strategic areas where response would more likely be urgent. These will be deployed in the six (6) Coast Guard Districts, namely: La Union (San Fernando), Palawan (Puerto Princesa), Metro-Cebu (Mactan), Zamboanga City, Davao City, and Metro-Manila (NAIA). The seventh will serve as standby helicopter.

For this purpose, a feasibility study was jointly undertaken by the Department and the PCG. The results showed that the project is economically feasible and socially desirable. Using a 15% social discount rate, a positive net present value of more than Five Billion Pesos and economic internal rate of return of 29.14% were obtained.

After subjecting the costs and benefits to sensitivity analysis, the results show that the project will still be economically viable even when the benefits are reduced by 20% and costs are increased by 20%, with an economic internal rate of return of 19.55%, which is still higher than the NEDA hurdle rate of 15%.

We are looking at a two-year procurement period, starting in January 2010 and ending in December 2011. The basic cost (excluding of one helicopter is estimated at US\$ 12,000,000.00. The total project cost is **P5,836.401 Million**, with foreign component of **P5,821.401 Million** and local component of **P15.000 Million**.

In view of the above, we are submitting the attached a copy of the Feasibility Study on PCG Maritime Disaster Response Helicopter Acquisition Project of 20 August 2009, together with the accomplished ICC-PE Form Nos. 1-13 including the Project Framework, for your review/evaluation.

We look forward to your continuing support for this project, and to our national and international commitments on maritime safety.

Very truly yours,

LEANDRO R. MENDOZA
Secretary



DOTC-OSCC OUTGOING

09-002307

INDICATIVE SUMMARY OF TERMS AND CONDITIONS

German Export Credit

and

Tied Commercial Loan

relating to the

**Delivery of 7 helicopters EC 145
for the Philippines Coast Guards**

presented to

Eurocopter

and

**Department of Transportation & Communication
on behalf of the Coast Guards, Philippines**

and

Department of Finance

by

CALYON

on

September 15, 2009

INDICATIVE SUMMARY OF TERMS & CONDITIONS
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The terms and conditions set forth in this indicative financing offer are subject to (i) Credit Committee approval at CALYON, (ii) satisfactory due diligence by CALYON, (iii) satisfactory support from the relevant Export Credit Agency ("ECA"), (iv) no material adverse change in the condition of the Borrower, the national or international market, the political, economic, financial, commercial, legal and fiscal environment of the transaction and/or of the Borrower's country and (v) execution of legal documentation acceptable to all the parties to the transaction.

Underlying Project

Buyer:	Department of Transportation & Communication on behalf of the Coast Guards, Philippines.
Supplier :	Eurocopter Deutschland GmbH, Germany.
Contract Value:	Approximately EUR 70,905,679 + 100% of the HERMES Premium
Payment Terms for the Aircrafts:	20% down payment 80% pro rata shipment
Payment Terms for the HERMES Premium:	25% upon receipt of HERMES invoice (assumed to be between T0 and T0 + 1 month) 75% at first aircraft delivery / first Drawing under the German Export Credit
Delivery Period:	Approximately 24 months
	<ul style="list-style-type: none"> • First aircraft : T0 + 14 working months • Second aircraft: T0 + 16 working months • Third aircraft : T0 + 19 working months • Fourth aircraft: T0 + 20 working months • Fifth aircraft : T0 + 22 working months • Sixth aircraft: T0 + 23 working months • Seventh aircraft: T0 + 24 working months

A - Financing of the ECA-eligible portion - The "Export Credit":

Lender: CALYON Germany.

Borrower: Republic of the Philippines represented by the Department of Finance.

Export Credit Agency (ECA): Euler - Hermes Kreditversicherung AG ("**Hermes**").

Currency: Japanese YEN ("**JPY**").

Export Credit Amount: The amount of the Export Credit will be the aggregate of:

- i) approximately JPY 7,526,382,564.8 (at a conversion rate of 1 EUR = 132.683 JPY) representing 80% of the value of goods and services under the commercial contract to be signed between the Supplier and the Buyer (the "**Commercial Contract**"),
- ii) up to 100% of the Credit Insurance Premium amount included in the Contract Value estimated to be approximately JPY 423,735,339 (based on estimated Credit Insurance Premium of 5.63% flat and a conversion rate of 1 EUR = 132.683 JPY).

Starting Point: The Starting Point (starting date for repayment) shall be fixed by the ECA according to the provisions of the Commercial Contract. This date should be fixed at the mean weighted date of deliveries. Based on the Delivery Period mentioned above, such Starting Point could be 20 months from the entry into force of the Commercial Contract.

Drawing: The Export Credit will be drawn pro rata deliveries made / services rendered, after fulfilment of the conditions precedent to disbursement of the Export Credit.

Repayment Period and Total Duration: Subject to the ECA's approval, the Export Credit shall have a repayment period of up to **10** years from the Starting Point.

Repayment: The Export Credit will be repaid in up to **20** equal and consecutive half-yearly instalments, the first instalment falling due 6 months after the Starting Point.

Interest: Interest will be calculated on the basis of 6 months LIBOR for Japanese YEN plus a margin of **1.90%** per annum, payable semi-annually in arrears.

After full disbursement of the loan a fixed interest rate may be provided by the Lender, provided funds are available in the capital markets at tenable costs in sufficient amount and life. Interest will accrue on the amounts outstanding under the loan at the margin of **1.90%** per annum above the cost-of-funds rate applicable on the date of fixing of the interest rate.

For information purpose only and without any commitment on behalf of CALYON at this stage, should the transaction being closed today, such fixed interest rate would be **3.53%** per annum.

Interest will be calculated from the date of each Drawing, on the outstanding amount of the Export Credit, on the basis of the actual number of days elapsed and in a 360-day year, and will be paid every 6 months in arrears.

Fees:

Commitment Fee: calculated on the undrawn portion of the Export Credit, on the basis of the actual number of days elapsed and in a 360-day year, at the rate of **0.75%** per annum and payable half-yearly in arrears from the signature date of the Export Credit Agreement.

Management Fee: calculated on the maximum amount of the Export Credit at the flat rate of **0.75%** and payable prior to the first disbursement and not later than 30 days from the signature date of the Export Credit Agreement.

Credit Insurance Premium:

For a repayment period of 10 years, the Credit Insurance Premium is estimated at **5.63%** flat and calculated on the Export Credit Amount, which is estimated on an indicative basis and for information purpose only. The final amount will be calculated by HERMES on the final Export Credit amount.

Credit Insurance Premium and other costs due to the ECA ("**ECA Premium**") shall be paid by the Supplier, if the eligible amount of the ECA Premium is financed under the Export Credit, up to the maximum possible amount shall be paid by way of Drawing under the Export Credit. On the top of the Credit Insurance Premium, Hermes will charge application and issuance fees which shall be borne by the Borrower and are today estimated at EUR 30,000.

ECA - Credit Insurance Cover:	An ECA-guarantee, fully effective and in force, being satisfactory to the Lender will have to be issued by the ECA, covering 95% of the commercial and political risks associated to the Export Credit.
Expenses:	The Borrower will pay or reimburse the Lender for all the charges and expenses including travel, legal opinions, legal and translation expenses, incurred in connection with (i) the negotiation, preparation and execution of the Export Credit Agreement and all related documents, (ii) any modification or waiver of the Export Credit Agreement and/or related documents and iii) the preservation and enforcement of the rights of the Lender whether or not the Export Credit Agreement is signed.
Taxes and Duties:	All amounts due under the Export Credit are to be paid net of any present or future taxes, duties, charges or withholdings whatsoever.
Governing Law and Arbitration :	German law and subject to the jurisdiction of the courts of Frankfurt and/or arbitration at the option of the Lender, except otherwise requested, the cost of which will be borne in any case by the Borrower.
Documentation:	<p>The Export Credit Documentation will include inter alia a standard Export Credit Agreement in form and substance satisfactory to the Lender, with customary clauses for such agreements, including but not limited to:</p> <ul style="list-style-type: none">• increased costs,• illegality,• tax gross up and indemnities,• breakage costs,• increases in capital and liquidity costs,• loan administration,• default interest,• set off,• changes in currency,• conditions precedent,• representations and warranties, undertakings,• events of default,• <i>pari-passu</i>, <i>protection of the juridical statute of the debt</i>,• waiver of immunity,• change of circumstances,• prepayment indemnity,• negative pledge and cross default.

B - Financing of the down payment portion – Tied Commercial Loan:

- Lender: CALYON Germany.
- Borrower: Republic of the Philippines represented by the Department of Finance.
- Currency: Japanese YEN (“JPY”).
- Tied Commercial Loan Amount: The amount of the Tied Commercial Loan will be for approx. JPY 1,881,595,641 (at a conversion rate of 1 EUR = 132.683 JPY) representing the down payment in the amount of up to 20% of the Commercial Contract amount. The amount of the Tied Commercial Loan could be increased by up to 25% of the Credit Insurance Premium payable upfront to the ECA on the date of issuance of HERMES invoice.
- Drawing: The Tied Commercial Loan will be drawn for direct payment to the Supplier in accordance with the payment terms provided for in the Commercial Contract, or to the Borrower as reimbursement after payment of the down payment in cash. In any case the Tied Commercial Loan shall not be disbursed until fulfilment of the conditions precedent to disbursement of the Export Credit.
- Tenor: **5 years** from the signing of the Tied Commercial Loan Agreement.
- Repayment: The Tied Commercial Loan will be repaid in up to 10 equal and consecutive half-yearly instalments, the first instalment falling due 6 months after signing of the Tied Commercial Loan Agreement.
- Interest: Interest will be calculated on the basis of 6 months LIBOR for Japanese YEN plus a margin of **3.60%** per annum, payable semi-annually in arrears.
- After full disbursement of the loan, a fixed interest rate may be provided by the Lender, provided funds are available in the capital markets at tenable costs in sufficient amount and life. Interest shall accrue on the amounts outstanding under the loan at the margin of **3.60%** per annum above the cost-of-funds rate applicable on the date of fixing of the interest rate.
- For information purpose only and without any commitment on behalf of CALYON at this stage, should the transaction being closed today, such fixed interest rate would be **4.625%** per annum.
- Interest will be calculated from the date of each Drawing, on the outstanding amount of the Tied Commercial Loan, on the basis of the actual number of days elapsed and in a 360-day year, and will be paid every 6 months in arrears.

Fees:

Commitment Fee: calculated on the undrawn portion of the Tied Commercial Loan, on the basis of the actual number of days elapsed and in a 360-day year, at the rate of **1.00%** per annum and payable half-yearly in arrears from the signature date of the Tied Commercial Loan Agreement.

Management Fee: calculated on the maximum amount of the Tied Commercial Loan at **2.25%** flat and payable prior to the first disbursement and not later than 30 days from the signature date of the Tied Commercial Loan Agreement.

Expenses:

The Borrower shall pay or reimburse the Lender for all the charges and expenses including travel, legal opinions, legal and translation expenses, incurred in connection with (i) the negotiation, preparation and execution of the Tied Commercial Loan Agreement and all related documents, (ii) any modification or waiver of the Tied Commercial Loan Agreement and/or related documents and iii) the preservation and enforcement of the rights of the Lender whether or not the Tied Commercial Loan Agreement is signed.

Taxes and Duties:

All amounts due under the Tied Commercial Loan are to be paid net of any present or future taxes, duties, charges or withholdings whatsoever.

Governing Law and Arbitration:

German law and subject to the jurisdiction of the courts of Frankfurt and/or arbitration at the option of the Lender, except otherwise requested, the cost of which will be borne in any case by the Borrower.

Documentation:

The Tied Commercial Loan Documentation will include inter alia a standard Tied Commercial Loan Agreement in form and substance satisfactory to the Lender, with customary clauses for such agreements, including but not limited to:

- increased costs,
- illegality,
- tax gross up and indemnities,
- breakage costs,
- increases in capital and liquidity costs,
- loan administration,
- default interest,
- set off,
- changes in currency,
- conditions precedent,
- representations and warranties, undertakings,
- events of default,
- pari-passu, protection of the juridical statute of the debt,
- waiver of immunity,
- change of circumstances,
- prepayment indemnity,
- negative pledge and cross default.

CALYON Contact Details

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DER BOTSCHAFTER
DER BUNDESREPUBLIK DEUTSCHLAND
THE AMBASSADOR
OF THE FEDERAL REPUBLIC OF GERMANY

Christian-Ludwig Weber-Lortsch

Manila, 12th October, 2009

14
12.10.09
16.10.09
Abges. H.
per fax 14.10.09

The Honourable
Mr. Leandro R. Mendoza

Secretary
Department of Transportation and Communication
16/F, Columbia Tower
Ortigas Avenue
Mandaluyong City

Dear Secretary Mendoza,

It has come to our attention that the German-French Company Eurocopter is in negotiations with the Philippine Government concerning the delivery of seven Helicopters for the Philippine Coast Guard.

The German Government very much supports this project which would not only help the Philippines improve its coastal surveillance and its maritime disaster response capability, but which can also be utilized for environmental purposes. The project will be partly financed by the German export credit facility, Euler Hermes AG. As such, the Coast Guard project could also complement on-going German projects in the Philippines that aim to protect the country's coastal zones through the prevention of illegal fishing activities and safeguarding of its maritime resources.

Helicopters EC 145 are exclusively manufactured by Eurocopter Deutschland (EDC), a division of the very prestigious EADS-Group. EDC is the only company producing helicopters in Germany and is known worldwide for its top quality, highly efficient and dependable products. In addition, Eurocopter is the only manufacturer of helicopters that boasts of a full MOR (maintenance, overhaul and repair) center in the Philippines.

I am convinced that a positive decision from the Philippine Government in favour of Eurocopter would be of benefit for both our countries.

Sincerely yours,

Sgd.
Christian-Ludwig Weber-Lortsch

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Post: P.O. Box 2190, Makati CPO
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1261 Metro Manila, Philippines
Telephone: 0053-(02) 702 3000
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E-Mail: deboma@pdtst.net
Telefax: 0063-(02) 702 3029

DELIVERY OF 7 HELICOPTERS EC 145 FOR THE PHILIPPINE COAST GUARD

Projected Drawdown and Amortization Schedule (In JPY)

PROPOSED LENDER: Calyon
BORROWER: Government of the Republic of the Philippines
LOAN AMOUNT: 7,954,098,393 JPY

MATURITY: 24 months drawing + 10 years repayment
INTEREST RATE: 6-month JPY LIBOR plus margin of 1.90% p.a. (currently at 2.88%)
 Other Borrowing Fee Management Fee = 0.75% flat
 Commitment Fee = 0.75% p.a. On undrawn balance

Period	Date	Year	Projected Drawdown	Principal Outstanding	Principal Amortization	Interest	Arrangement Fee	Commitment Fee	Total Payment	Present Values
0	January	2010	109,914,324.60	109,914,324.60					98,876,658.29	98,876,658.29
0.67	August	2010		109,914,324.60		2,110,365.03	59,655,737.95	39,220,920.34	31,526,045.29	29,585,190.61
1.17	February	2011	1,392,999,013.06	1,502,913,337.66	1,502,913,337.66	1,582,766.27		29,415,690.26	9,646,747.59	8,631,563.09
1.33	April	2011	1,075,197,509.26	2,578,110,846.91	2,578,110,846.91	7,213,964.02		10,079,976.65	17,293,960.67	15,230,151.38
1.58	July	2011	1,075,197,509.26	3,653,308,356.17	3,653,308,356.17	18,562,398.10		2,687,993.77	21,250,391.87	18,273,785.59
1.67	August	2011	1,075,197,509.26	4,728,505,865.43	4,728,505,865.43	8,767,940.05		4,031,990.66	12,799,930.71	10,919,928.89
1.83	October	2011	1,075,197,509.26	5,803,703,374.68	5,803,703,374.68	22,696,828.15		1,343,996.89	24,040,825.04	20,186,581.45
1.92	November	2011	1,075,197,509.26	6,878,900,883.94	6,878,900,883.94	13,928,888.10		671,998.44	14,800,886.54	12,163,071.13
2.00	December	2011	1,075,197,509.26	7,954,098,393.20	7,954,098,393.20	16,509,362.12			16,509,362.12	13,644,100.93
2.17	February	2012		7,556,393,473.54	397,704,919.66	38,119,672.29			435,984,591.95	354,558,063.13
2.67	August	2012		7,158,698,553.88	397,704,919.66	108,812,066.02			506,516,985.88	392,838,025.89
3.17	February	2013		6,760,983,634.22	397,704,919.66	103,085,115.18			500,790,034.84	370,321,427.58
3.67	August	2013		6,363,278,714.56	397,704,919.66	97,368,164.33			495,063,083.99	349,049,776.31
4.17	February	2014		5,965,573,794.90	397,704,919.66	91,631,213.49			489,336,133.15	328,955,963.74
4.67	August	2014		5,567,868,875.24	397,704,919.66	85,904,262.85			483,609,182.31	309,976,431.41
5.17	February	2015		5,170,163,955.58	397,704,919.66	80,177,311.80			477,882,231.46	292,050,985.65
5.67	August	2015		4,772,459,035.92	397,704,919.66	74,450,360.96			472,155,280.62	275,122,622.13
6.17	February	2016		4,374,754,116.26	397,704,919.66	68,723,410.12			466,428,329.78	259,137,359.27
6.67	August	2016		3,977,049,196.60	397,704,919.66	62,996,459.27			460,701,378.93	244,044,080.40
7.17	February	2017		3,579,344,276.94	397,704,919.66	57,269,508.43			454,974,428.09	229,794,384.07
7.67	August	2017		3,181,639,357.28	397,704,919.66	51,542,557.59			449,247,477.25	216,342,441.95
8.17	February	2018		2,783,934,437.62	397,704,919.66	45,815,606.74			443,520,526.40	203,644,864.20
8.67	August	2018		2,386,229,517.96	397,704,919.66	40,088,655.90			437,793,575.56	191,660,571.80
9.17	February	2019		1,988,524,598.30	397,704,919.66	34,361,705.06			426,066,824.72	180,350,675.35
9.67	August	2019		1,590,819,678.64	397,704,919.66	28,634,754.22			420,612,723.03	168,678,360.34
10.17	February	2020		1,193,114,758.98	397,704,919.66	22,907,803.37			414,885,772.19	150,108,942.93
10.67	August	2020		795,409,839.32	397,704,919.66	17,180,852.53			409,158,821.35	141,147,633.58
11.167	February	2021		397,704,919.66	397,704,919.66	11,453,901.69			403,431,870.50	132,695,300.92
11.667	August	2021		(0.00)	397,704,919.66	5,726,960.84				
			7,954,098,393.20		7,954,098,393.20	1,217,672,854.33	59,655,737.95	95,516,548.33	9,188,894,082.64	5,178,597,720

NPV **5,178,597,720**
 GE **34.89%**

*Reference Rate as of 10 July 2009, 1EUR0=132.683 JPY

*Interest rate as of 10 July 2009, 2.88%

*Credit Insurance Premium Estimated at 450,218,797 (at 5.63 % of the 85% of the Contract Amount) + fees of 3,980,490

Effective Grant Element 30.04%

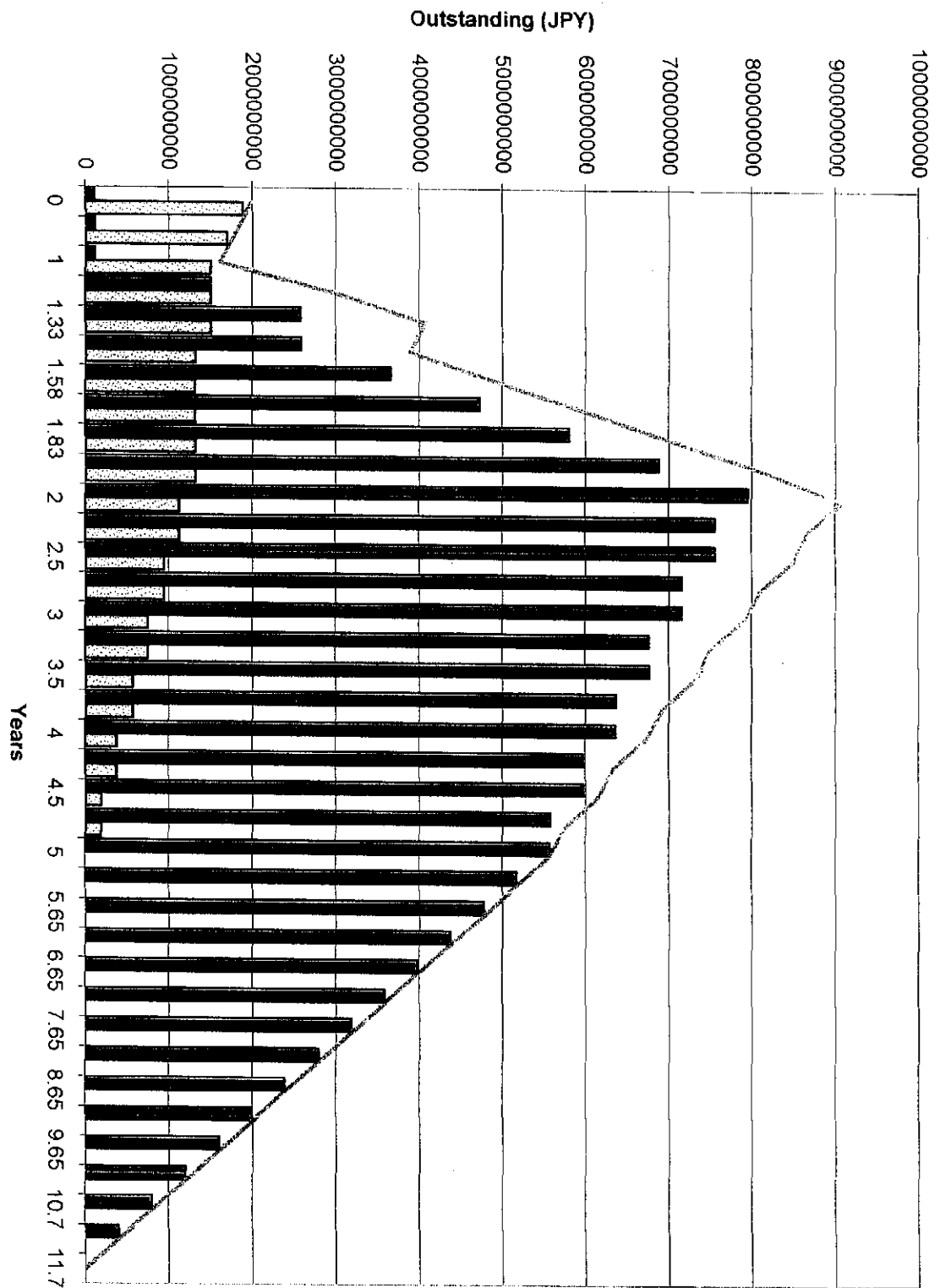
DELIVERY OF 7 HELICOPTERS EC 145 FOR THE PHILIPPINE COAST GUARD
 Projected Drawdown and Amortization Schedule (in JPY)

PROPOSED LENDER: Calyon
BORROWER: Government of the Republic of the Philippines
LOAN AMOUNT: 1,881,595,641.20 JPY

MATURITY: 5 years
INTEREST RATE: 6-month JPY LIBOR plus margin of 3.60% p.a. (current total at 4.58%)
 Other Borrowing Fees*: Management Fee = 2.25% flat
 Commitment Fee = 1.0% p.a. On undrawn balance

Period	Date	Year	Projected Drawdown	Principal Outstanding	Principal Amortization	Interest	Management Fee	Commitment Fee	Total Payment	Present Values
0	January	2010	1,881,595,641.20	1,881,595,641.20	188,159,564.12	43,088,540.18	42,335,901.93	1,567,996.37	43,903,898.29	43,903,898.29
0.5	July	2010		1,693,436,077.08	188,159,564.12	38,779,686.17			231,248,104.30	220,486,416.29
1	January	2011		1,505,276,512.96	188,159,564.12	34,470,832.15			226,939,250.29	206,308,409.35
1.5	July	2011		1,317,116,948.84	188,159,564.12	30,161,978.13			222,630,396.27	192,972,503.70
2	January	2012		1,128,967,384.72	188,159,564.12	25,853,124.11			218,321,542.25	180,431,026.65
2.5	July	2012		940,797,820.60	188,159,564.12	21,544,270.09			214,012,688.23	168,638,918.89
3	January	2013		752,638,256.48	188,159,564.12	17,235,416.07			209,703,834.21	157,553,594.45
3.5	July	2013		564,478,692.36	188,159,564.12	12,926,562.06			205,394,980.19	147,134,808.14
4	January	2014		376,319,128.24	188,159,564.12	8,617,708.04			201,086,126.18	137,344,529.86
4.5	July	2014		188,159,564.12	188,159,564.12	4,308,854.02			196,777,272.16	128,146,825.64
5	January	2015	1,881,595,641.20	0.00	188,159,564.12	236,986,971.01	42,335,901.93	1,567,996.37	192,468,418.14	119,507,744.84
									NPV	1,702,428,676
									GE	9.52%

*Reference Rate as of 10 July 2009: TEURO=132.683 JPY
 Interest rate as of 10 July 2009: 4.58%



■ Hermes credit
 ▨ TCL
 □ Total