

NPM No. 149-2017

29 December 2017

COMMO. JOEL S. GARCIA, PH.D
Officer-in-Charge
PHILIPPINE COAST GUARD (PCG)
139 25th St., Port Area, 1018 Manila

Re: Procurement of Defense Materiel from a Foreign Government -

Dear Commo Garcia:

This refers to your letter requesting guidance on whether PCG can enter into a contract with “Rosoboronoexport”, a government-owned Russian Company for the possible acquisition of vehicles, firearms and armaments.

It is represented that the PCG was given by the Congress of the Philippines an additional budget to develop and improve its personnel capacity and capability and modernize its equipment to become responsive and proactive as the primary maritime agency in the country. Thus, in line with its function to secure and protect the country’s vast seas and coastal areas, it intends to resort to Government-to-Government Contract with “Rosoboronoexport” for the acquisition of vehicles, firearms and armaments. A comparison of prices for similar goods will show that the amount offered by “Rosoboronoexport” is way cheaper than the prevailing market prices and of better quality than those usually procured from commercial companies.

At the outset, we wish to clarify that the determination of the appropriate procurement method to be used for a particular project rests within the authority and accountability of the Head of the Procuring Entity (HOPE), as the approving authority, and the Bids and Awards Committee (BAC), as the recommendatory body.¹ We adhere to the position that no other agency, office or official may interfere with these functions of the HOPE and the BAC and dictate the appropriate procurement method to be used for a particular project. Guided by the provisions of RA 9184 and its 2016 revised IRR, the Procuring Entity (PE), through the HOPE and the BAC, is in the best position to determine the appropriate method of procurement for all its projects taking into consideration all the surrounding circumstances for each procurement project.

Section 10 of RA 9184 mandates that all procurement shall be done through competitive bidding, except as provided for in Article XVI thereof, which enumerates the allowable alternative methods of procurement. Accordingly, alternative methods of procurement may be resorted to only upon prior approval of the HOPE, in order to promote economy and efficiency, and whenever justified by the conditions for each alternative method of procurement specified in Sections 49 to 53 of the IRR of RA 9184.² This is consistent with

¹ Section 12.1 of the IRR of RA 9184 in relation to Section 48.1 of the IRR of RA 9184.

² Section 48.1 of the IRR of RA 9184.

the pronouncement of the Supreme Court that competitive bidding may not be dispensed with nor circumvented, and that alternative methods of procurement may only be resorted to in the instances provided for by law.³

It is worthy to emphasize that the responsibility and accountability in determining and justifying the existence of conditions or circumstances warranting the use of any of the alternative methods of procurement provided in RA 9184 and its IRR rest primarily with the procuring entity.⁴

All told, it is our considered view that the PE, through the HOPE and the BAC, is in the best position to determine and verify, after careful and meaningful assessment, the existence of the conditions warranting the use of alternative methods of procurement.

At this juncture, it is worthy to note that the proposed Government-to-Government Contract may be covered by a Treaty or International or Executive Agreement. In such case, if the agreement expressly provides the use of procurement rules other than RA 9184 and its 2016 revised IRR, such will be observed pursuant to Section 4.2 of the 2016 revised IRR.

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

Very truly yours,
(sgd.)

 **DENNIS S. SANTIAGO**
Executive Director V

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³ *Manila International Airport Authority, et al v. Olongapo Maintenance Services Inc., et al; Antonio P. Gana, et al. v. Triple Crown, etc.; Triple Crown etc. v. Manila International Airport Authority, et al.*, G.R. Nos. 146184-85/ G.R. No. 161117/ G.R. No. 167827, January 31, 2008.

⁴ NPM No. 107-2013 dated 20 December 2013.