

NPM No. 123-2015

27 November 2015

[REDACTED]

Re: Highly Technical Consultant

Dear [REDACTED]:

This refers to your letter requesting our opinion as to whether the Chairman and Members of the Board of PhilPost can directly hire consultants under Section 53.7 of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that PhilPost intends to hire consultants to provide support to its Chairman and Members of the Board as provided under Section 21 of GCG MC. No. 2012-07 (Code of Corporate Governance). Said consultants will work in a primarily confidential nature, extending assistance and/or providing guidance to the Members in their decision-making on matters presented before them. Hence, this request.

As a general rule, procurement of consulting services shall be undertaken through public bidding pursuant to Section 10 of RA 9184 and its revised IRR. Nonetheless, as discussed in our previous opinion¹, resort to Alternative Methods of Procurement may be conducted in highly exceptional cases, subject to the prior approval of the Head of the Procuring Entity (HOPE) and when justified by the conditions provided by RA 9184 and its IRR. Under Section 53.7 of the revised IRR of RA 9184, the procuring entity may undertake Negotiated Procurement in the engagement of highly technical consultants, thus:

Section 53.7 Highly Technical Consultants. In the case of individual consultants hired to do work that is (i) highly technical or proprietary; or (ii) primarily confidential or policy determining, where trust and confidence are the primary consideration for the hiring of the consultant: Provided, however, That the term of the individual consultants shall, at the most, be on a six month basis, renewable at the option of the appointing Head of the Procuring Entity, but in no case shall exceed the term of the latter.

Accordingly, the procuring entity has the discretion to resort to alternative methods of procurement, that is, Negotiated Procurement through the engagement of Highly Technical Consultants, subject to compliance with the parameters and factors laid down in RA 9184 and its revised IRR. In that, PhilPost should sufficiently identify the existence and validity of the


¹ NPM No. 049-2014 dated 13 October 2014.

circumstances that warrant the use of the alternative procurement modality. Thus, the identified work is highly technical or proprietary or primarily confidential or policy determining, where trust and confidence is the primary consideration. It must be emphasized, however, that in the engagement of a consultant, the expertise sought to be secured is not available within the procuring entity, thereby necessitating the hiring of the consultants from outside sources. The period of engagement is for six (6) months, subject to renewal by the HOPE.

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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