



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

**NPM No. 73-2012**

8 June 2012

**MR. APOLONIO T. RIVERA JR.**

*President*

**RTR VENTURES**

Unit G, 2/F Raha Sulayman Bldg.

108 Benavidez St., Legaspi Village, Makati City

**Re: Authentication of Eligibility Documents of Foreign Bidders**

Dear Mr. Rivera:

We respond to your letter requesting clarification on whether the Bids and Awards Committee (BAC) is authorized to revise or change the eligibility requirements for foreign bidders, under Republic Act (RA) No. 9184 and its Implementing Rules and Regulations (IRR).

As represented, RTR Ventures (RTR) claims that procuring entities differ in their interpretation of Section 23.2<sup>1</sup> of the IRR of RA 9184 because most government agencies still require foreign bidders to secure authentication of their eligibility documents under Class "A" Documents, even though they are already written in English. RTR is of the view that the requirement of authentication should only apply to documents in foreign language which have been translated to English. Hence, RTR asserts that requiring bidders to submit authenticated eligibility documents under Class "A" Documents which are already in English is already tantamount to the revision and modification of Section 23.2 of the IRR of RA 9184.

For your guidance, Section 23.2 of the IRR of 9184 should be understood following the principle of *verba legis* or the plain meaning rule. As previously held by the Supreme Court, where a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempt to interpret.<sup>2</sup> Thus, in a previous opinion<sup>3</sup>, we have reiterated the need for the translation with a corresponding certification of "Class A" and "Class B" documents if such eligibility documents are expressed in a foreign language other than English. In the situation RTR has illustrated, since the eligibility requirements are

<sup>1</sup> Subject to Section 37.1 of this IRR, in the case of foreign bidders, the foregoing eligibility requirements under Class "A" Documents may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class "A" and "B" Documents if they are in other foreign language.

<sup>2</sup> *Limson vs. Wack Wack Condominium*, G.R. No. 188802 dated 14 February 2011.

<sup>3</sup> NPM No. 066-2009 dated 29 December 2009.

already written in English, there is no more need to have the same certified. Certification is necessary only to verify the correctness of the translation from a foreign language to the English language. To require certification when a document is already in English is an imposition of an additional eligibility or technical document which is highly discouraged because it increases transaction cost and reduces competition<sup>4</sup>, and in contravention of Section 23 of the IRR of RA 9184. We wish to emphasize that Section 23.2 of the IRR speaks of certification, which refers to a certificate attesting the truth of some statement or event<sup>5</sup>. This differs from the function of authentication that is an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do.<sup>6</sup>

With regard to the statement that authenticated documents are considered unreliable, we believe that authentication is an important function in determining the genuineness of documents. The authentication functions/services of the Department of Foreign Affairs (DFA) are performed consistent with the 1963 Vienna Convention on Consular Relations. Therefore, when the DFA duly authenticates certain acts, deeds or documents, the receiving embassies or consulates or any other foreign legal entities are, in effect, assured that aforesaid documents are in order or have been legalized in accordance with proper procedure.<sup>7</sup>

Based on the foregoing, we wish to clarify that Class "A" and "B" documents which are already written in English are not required to be certified by the appropriate embassy or consulate of the Republic of the Philippines when submitted as part of the eligibility documents under Section 23 of the IRR. The requirement for certification is limited to documents that are originally written in a foreign language and are consequently translated to the English language.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular circumstances as presented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director III*

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<sup>4</sup> NPM No. 051-2009 dated 14 October 2009.

<sup>5</sup> Random House Webster's Unabridged Dictionary, Second Edition.

<sup>6</sup> <http://thelawdictionary.org/letter/a/page/73/> last accessed on 8 June 2012.

<sup>7</sup> <http://dfa.gov.ph/main/index.php/consular-services/authentication> last accessed on 8 June 2012.