



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

NPM No. 22-2013

27 March 2013

MS. JENNIFER F. AGLERON
Product Manager
MAXIMA MACHINERIES INCORPORATED (MAXIMA)
871 Quezon Avenue, Quezon City

Re: Nationality Preference as Part of Technical Specifications

Dear Ms. Agleron:

We respond to your electronic mail dated 30 October 2012 requesting our assistance in reviewing and evaluating the public bidding conducted by the National Irrigation Administration (NIA) for the procurement of one (1) unit mini bus, six (6) wheels with seating capacity not to exceed thirty (30) passengers and 4x2 DED (BS-007-12).

As represented, Maxima submitted a letter to NIA requesting the latter¹ to clarify the technical specifications as regards the indicated Japan make and model, and to consider vehicle make from other countries. Based on this representation, we assume that the concern of Maxima is whether the Procuring Entity (PE) can specify a specific country of origin as part of the technical specifications.

For your guidance, the Government Procurement Policy Board and its Technical Support Office only render policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions² under the law. Thus, it cannot impose or recommend to the Bids and Awards Committee (BAC) which bidders should be declared as eligible, which bid should be accepted as the lowest calculated and responsive bid, and to whom the contract should be awarded.³

Nonetheless, it bears stressing that under the revised Implementing Rules and Regulations of Republic Act No. 9184, PEs are precluded from requiring specific country of origin as part of the technical specifications for the project. Rather, the specifications shall be

¹ We note that copy of this letter of Maxima to NIA was not attached to your letter to this office.

² Quasi-judicial is defined as the 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, series of 1988.

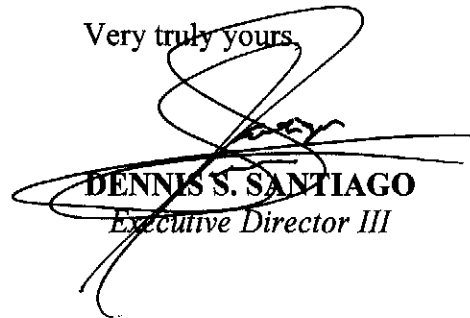
³ NPM No. 168-2012 dated 28 December 2012 citing 150-2012 dated 11 December 2012.

based on the performance requirements and recognized industry standards and not on the basis of country of origin.⁴

Considering that Maxima has filed its request for reconsideration, which has been denied by the PE, it can proceed to file the corresponding protest in the prescribed form, *i.e.* a verified position paper⁵ to the Head of the Procuring Entity (HOPE) within seven (7) calendar days from receipt of the BAC's denial of the request for reconsideration. Court action may be resorted to only after the protests contemplated shall have been completed, *i.e.* resolved by the HOPE with finality.⁶

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 situation presented, and may not be applicable given a different set of facts and circumstances. 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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⁴ NPM No. 15-2012 dated 8 January 2012.

⁵ Section 55.4 of the IRR of RA 9184.

⁶ Section 58 of the IRR of RA 9184.