



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

**NPM No. 04-2011**

2 March 2011

**HON. EVELYN V. GUERRERO**

*Undersecretary, Department of Budget and Management  
Chairperson, Inter-Agency Bids and Awards Committee*

**PROCUREMENT SERVICE**

**DEPARTMENT OF BUDGET AND MANAGEMENT**

PS Compound, Cristobal Street,  
Paco, Manila

Dear Madam:

We refer to your letters dated 9 December 2010, 27 January 2011 and 15 February 2011 addressed to the Honorable Secretary Florencio B. Abad of the Department of Budget and Management in his capacity as Chairperson of the Government Procurement Policy Board (GPPB):

1. Requesting the list of the countries with which the Philippines has reciprocal rights as mentioned in Section 23.5.1.2 of the revised Implementing Rules and Regulations (IRR) of Republic Act 9184 (RA 9184) to be made available as soon as possible;
2. Requesting for guidance on how the Procurement Service – Bids and Awards Committee (PS-IABAC) shall proceed in the evaluation/post-qualification of bidders in Public Bidding Nos. 10-118, 10-128 and 10-135 considering the non-availability of the list and the fact that the Department of Foreign Affairs (DFA) does not also maintain such list; and
3. Recommending (i) the suspension of the direct participation of foreign bidders pursuant to paragraphs (a) and (b) of Section 23.5.1.2 of the IRR of RA 9184, and (ii) the limitation of participation of foreign bidders only through a joint venture arrangement with a local supplier.

We wish to inform you that the GPPB is presently coordinating with the DFA in creating the list of countries with which the Philippines enjoys reciprocal rights on matters of eligibility of its nationals in public procurement abroad.

Please note, however, that said list shall not include countries covered by treaties or international or executive agreements as provided under Section 4 of the IRR of RA 9184. In such instances, it is the foreign bidder which has the burden of proving, through the

submission of the proper documents, the existence and validity of any treaty, international or executive agreement which allow them to bid in the particular procurement project.

Pending the issuance of the above-mentioned list, the Government Procurement Policy Board – Technical Support Office has been providing guidance by stating that is the responsibility of the foreign bidder to establish the law or regulation granting reciprocal rights or privileges allowing Filipino nationals to participate in public procurement in its country. For its part, the procuring entity may require the bidders to submit additional documents, such as a sworn statement that the country in which the latter is a citizen, or in which the corporation or partnership is organized and registered, extends such privilege.

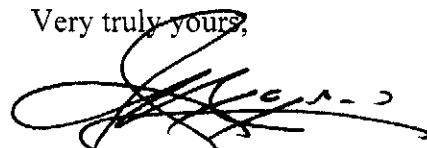
The foregoing notwithstanding, we would like to inform you that in meeting last 28 January 2011, the GPPB and its Inter-Agency Technical Working Group resolved to amend the *Guidelines on the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Project*<sup>1</sup> such that pending the issuance of the list, foreign bidders claiming eligibility by reason of reciprocity shall submit a certification from the relevant office from the bidder's country of origin that Filipinos are allowed to participate in their government procurement activities for the same item/product. This shall partly ensure that the country of the foreign bidder extends the same benefit to Filipinos without necessarily requesting for a copy of the treaty, or international or executive agreement.

Thus, it is our considered opinion that the PS-IABAC may proceed with its procurement activities notwithstanding the non-availability of the list by requiring the submission by the foreign bidders of the abovementioned documents. PS-IABAC shall then verify, validate, and ascertain the authenticity of the statements should the foreign bidder be declared as the Lowest Calculated Bid during post-qualification.

We trust that these amendments will sufficiently address the matter without need to suspend or limit the direct participation of foreign bidders in public procurement as you have judiciously proposed.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



**DENNIS LORNE S. NACARIO**  
*OIC - Executive Director*

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<sup>1</sup> Issued through GPPB Resolution 018-2005 dated 12 September 2005