



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

**NPM No. 41-2013**

8 May 2013

**HON. RICARDO A. DAVID JR.**

*Commissioner*

**BUREAU OF IMMIGRATION (BI)**

Magallanes Drive, Intramuros, Manila

**Re : Trade-in Transaction**

Dear Commissioner David:

This refers to the letter of the Honorable Commissioner dated 22 March 2013 requesting for guidance on the action to undertake in relation to the procurement of spare parts and removable devices for the repair and replacement of the damaged and defective parts of forty-six (46) units of 3M Line Inspection Reader System, Model PV33 (3M Passport Readers).

As represented, BI resorted to Direct Contracting based on the representation and certification of 3M Philippines that it does not have other reseller, authorized service center, or sub-contractor to undertake the repair of 3M Passport Readers except through its exclusive fulfillment partner, Secur Links. In the course of the project, Secur Links informed BI that there are no more available spare parts for the 3M Passport Readers since 3M Corporation has withdrawn 3M Passport Readers from the market, including its extended maintenance support. Since 34 out of the 46 units would entail the replacement of spare parts, while the remaining 12 units require mere replacement of power supply, Secur Links proposed to replace BI's existing 34 units of 3M Model PV33 Passport Readers with the new 3M Model AT 9000 Passport Readers at the cost of the repair, and undertake the repair of the remaining 12 units that require power supply replacement, *i.e.*, PhP6,015,450.00 and PhP127,680.00, respectively.

**Acquisition of Spare Parts and Repair Services**  
**Not Acquisition of Brand New Equipment**

We note that the procurement activity is for the acquisition of spare parts and services to repair and replace the damaged and defective parts of 3M Model PV33 Passport Readers, but the offer of Secur Links is to replace the 34 unserviceable units with the brand new 3M Model AT 9000 Passport Readers and replace the power supply of the remaining 12 units. In this regard, Secur Links' offer does not comply with the technical requirements set by BI, and provides no basis for it to award the contract to Secur Links.

If the proposal of Secur Links will be pursued, the transaction will amount to an acquisition of brand new equipment, which is entirely different from the original procurement activity for acquisition of spare parts and repair services. Thus, considering that the proposal changes the resulting transaction into an acquisition of brand new equipment, as well as the conditions surrounding the procurement activity, it behooves BI to consider resorting to Public Bidding for the project.


### **Trade-in Transaction**

Looking more closely at the proposal of Secur Links, the proposed transaction is akin to a trade-in transaction. As mentioned in our previous opinion<sup>1</sup>, trade-in transaction involves two distinct, but relatively connected activities of government agencies, namely, disposal of government property and procurement, which are covered by different rules. Disposal of government property is governed by Executive Order No. 888, dated 18 March 1983, and Commission on Audit (COA) Circular No. 89-296, dated 27 January 1989, while procurement is covered by Republic Act No. (RA) 9184 and its associated revised Implementing Rules and Regulations. Although a trade-in transaction is not prohibited, the procuring entity must have originally intended to resort to such scheme from the very start of the acquisition process, and not as a mere “after-thought”, so to speak, or a belated alternative considering that corresponding procurement processes and documentations must be complied with.

It must be stressed that BI should carefully consider whether the new model being offered as replacement to the unserviceable units will be interoperable and compatible with the existing BI system and equipment. To reiterate, since the transaction will result in the acquisition of brand new equipment, BI should first determine whether there are suitable product substitutes in the market.

### **Evaluation of Expenditure**

Moreover, BI should meticulously and judiciously study whether the Approved Budget for the Contract (ABC) for delivery of spare parts and repair services is still applicable to the acquisition of brand new equipment. We wish to note that cursory market and price verification research over the internet shows that the price of a brand new Model AT 9000 Passport Reader for at least 50 units amount to **GBP1,257<sup>2</sup>** or **PhP78,836.07<sup>3</sup>**, resulting in a total of only around **PhP2,680,426.38** for 34 units.

In this regard, allow us to point out that agreeing to the proposal of Secur Links to replace BI's existing 34 units of 3M Model PV33 with the new 3M Model AT 9000 Passport Readers at the cost of the repair in the total amount of **PhP6,015,450.00** would be disadvantageous to the government, since the cost of repairing the existing equipment is already higher by **124.42%** than the cost of procuring a brand new equipment, without taking into account the additional price reduction for trading-in BI's existing Model PV33 with brand new Model AT 9000 Passport Readers; and even if other costs such as freight, insurance, taxes, etc., are factored in. 

<sup>1</sup> Non Policy Matter No. 40-2009 dated 31 July 2009.

<sup>2</sup> <http://idscan.co.uk/products/passport-scanners-sdk?gclid=CKiq6JmILcCFSxU4godioQAjQ#axzz2ELwNoqa8> last accessed on 14 May 2013, 11:00 a.m.

<sup>3</sup> Converted using an exchange rate of PhP62.72 to GBP1.00.

Additionally, we would like to respectfully stress that COA Circular 85-55-A, dated 8 September 1985, provides that an example of an Excessive Expenditure is the payment of repair of government equipment at a cost exceeding 30% of the current market price of the same or similar equipment.

### **Direct Contracting Not Applicable**

At this juncture, allow us to emphasize that since there are other Passport Readers available in the market apart from that manufactured by 3M Corporation, Direct Contracting cannot be utilized for the acquisition of brand new Passport Readers. Even though the 3M Passport Reader is proprietary in nature and can be obtained only from the proprietary source, there may be other Passport Readers in the market, which are likewise proprietary in nature that can be obtained. Accordingly, as there are several kinds of Passport Readers being offered in the market, the procurement thereof should have been through competitive bidding.

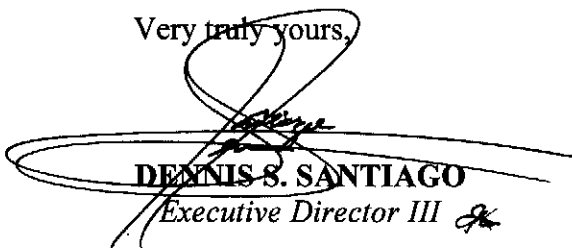
### **Summary**

All told, we are of the view that BI cannot consider the proposal of Secur Links to replace BI's existing units with brand new 3M Model AT 9000 Passport Readers in lieu of the repair and replacement of its spare parts, as it does not comply with the technical requirements of BI, and will entail the disposal of government property and procurement of brand new equipment without undertaking the mandatory processes required by applicable governing law, rules and regulations.

Considering that the transaction will ultimately entail acquisition of brand new equipment, BI should consider Public Bidding for its procurement. And if it intends to dispose of its existing machines, BI should comply with the requirements for disposal of government property. It goes without saying that in this transaction, as with all other procurement activities, there is a need to meticulously and judiciously prepare the ABC and validate its appropriateness for the project *vis-à-vis* current market prices in due consideration of the prohibition on Excessive Expenditures.

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

Very truly yours,

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