



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

NPM No. 106-2013

20 December 2013

PSSUPT ROEL S. OBUSAN, CESE
Head, NHQ BAC Secretariat
PHILIPPINE NATIONAL POLICE (PNP)
NATIONAL HEADQUARTERS
DIRECTORATE FOR LOGISTICS
Camp Crame, Quezon City

**Re : Simultaneous Functional Testing of Equipment
During Bid Evaluation**

Dear PSSupt Obusan:

This refers to your letter dated 18 December 2013, seeking clarification on whether the PNP can subject all bids declared as “passed” during the bid evaluation to a “functional test” before the verification, validation, and ascertainment of the submitted documents of the Lowest Calculated Bid (LCB).

As represented, the Technical Working Group (TWG) of PNP conducts a “functional test” for more than five (5) days depending on the equipment to be procured and the test parameters required by the PNP Directorate for Research and Development. PNP is of the view that conducting successive “functional test” after each bid is declared disqualified will entail more time; hence, is considering conducting simultaneous “functional test” in order to complete the post-qualification within the period prescribed in Section 34.8 of the revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184. It is in this context that the aforementioned issue is being raised.

For your guidance, bid evaluation under Section 32 of the IRR of RA 9184 entails the determination of the LCB using the non-discretionary “pass/fail” criterion in considering the completeness of the bid and arithmetical corrections. After determining the bidder with the LCB, it is then subjected to post-qualification under Section 34 of the same IRR in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions specified in the Bidding Documents. It should be noted that the post-qualification process should be completed within seven (7) calendar days, or in exceptional cases, not later than aggregate period of thirty (30) calendar days, from the determination of the LCB or HRB, as provided in Section 34.8 of the IRR.

During post-qualification, the procuring entity verifies, validates, and ascertains all statements made and the documents submitted by the bidder with the LCB or Highest Rated Bid (HRB) using non-discretionary pass/fail criterion. As mentioned in a previous opinion, the post-qualification includes an evaluation of the bidder’s stated competence and

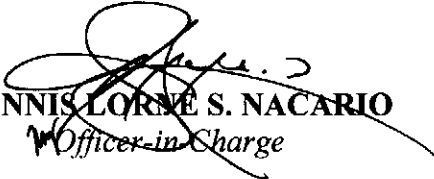
experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government and private contracts, the goods/product, after-sales and/or maintenance capabilities for the procurement of goods¹. The product testing, during which the procuring entity may conduct the “functional test” and other test parameters it has identified and incorporated in its Bidding Documents, is done during the post-qualification stage of the procurement process. Thus, before the Bids and Awards Committee (BAC) could even conduct the product testing, the rules require that it should ensure that the bidder who will undergo post-qualification has submitted all the legal, technical, and financial requirements, and the LCB/HRB.²


Section 34.5 of the IRR instructs the BAC to notify the bidder with the LCB or HRB of its post-disqualification and the grounds for it, in the event that it is determined to have failed the criteria for post-qualification. The preceding section in the same IRR then mandates the BAC to initiate and complete the same post-qualification process on the bidder with the second LCB or HRB. In this instance, the procuring entity is given another seven (7) to thirty (30) calendar days to complete the post-qualification process for the second LCB or HRB.

Based on the foregoing, we are of the opinion that the practice of subjecting all bids declared as “passed” during the bid evaluation to a “functional test” before the verification, validation, and ascertainment of the submitted documents of the Lowest Calculated Bid (LCB) runs counter to the provisions of Section 32 and 34 of RA 9184 and its IRR.

We hope that this opinion issued by the GPPB-TSO 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 LORNE S. NACARIO
Officer-in-Charge

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¹ Non Policy Matter No. 69-2007 dated 3 December 2007.

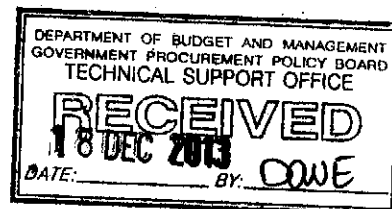
² Non Policy Matter No. 131-2012 dated 19 October 2012.



Republic of the Philippines
National Police Commission
NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE
DIRECTORATE FOR LOGISTICS
Camp Crame, Quezon City



ATTY. DENNIS S. SANTIAGO
Executive Director
Technical Support Office
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center, Ortigas Jr. Road,
Ortigas Center, Pasig City



Dear Atty. Santiago:

This pertains to the preparation of the Philippine National Police (PNP) for its 2014 Procurement Activities specifically in the conduct of testing of the goods/product during the post-qualification stage which we also described as "*functional test*".


The PNP adheres to the governing principles on government procurement and at the same aims to procure the best equipment for our personnel in the field whose lives are twenty-four hours in danger. As the saying goes, "*we have one foot in the grave and one foot in the jail.*" But with the appropriate equipment, the risk is lessened.

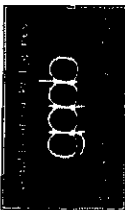
In this connection, may we request guidance whether the PNP can conduct "*functional test*" after the Bid Evaluation Process but before the Post-Qualification Process, such that all bids declared as "passed" during the Bid Evaluation will undergo the "*functional test*" before the verification, validation and ascertainment of the submitted documents of the Lowest Calculated Bid (LCB).

Further, our Technical Working Group (TWG) conducts "*functional test*" for more than five days depending on the equipment to be procured and the test parameters required by our Directorate for Research and Development (DRD), hence successive "*functional test*" after a bid is declared disqualification will entail more time. But with "*simultaneous functional test*", the PNP can complete the post-qualification within the period required under Section 34.8 of the Revised IRR of RA 9184.

We highly appreciate your untiring assistance with the Philippine National Police.

Very truly yours,


ROEL S. OBUSAN, CESE
Police Senior Superintendent
Head, NHQ BAC Secretariat



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

NPM No. 64-2012

25 May 2012

ENGR. ROLYN Q. ZAMBALES
Ofc-Director
OFFICE OF PROJECT DEVELOPMENT SERVICES (OPDS)
DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT
 A. Francisco Gold Condominium II,
 EDISA cor. Mapagmahal St., Diliman, Quezon City

Re: Validity of the grounds for post-disqualification

Dear Engr. Zambales:

We respond to your letter dated 4 May 2012 requesting for opinion whether the grounds cited by the Bids and Awards Committee (BAC) of the Municipality of Sigma, Province of Capiz, are valid grounds for post-disqualification of the bidder with the Lowest Calculated Bid (LCB).

As represented, Program Management and Technical Resources Corporation (Promatech), in joint venture with Up-town Industrial Sales Inc. (Up-town), emerged as the bidder with the LCB, for the procurement of Heavy Equipment (Backhoe) by the Municipality of Sigma, Capiz. Subsequently, the BAC issued a letter requiring Promatech to submit additional documents on the basis of which the former "will conduct Post-Qualification to verify/validate the veracity of all documents submitted". During post-qualification, the BAC sought to inspect the subject equipment, a crawler type Liu Gong Brand backhoe with Giant 70 breaker, but was informed that it was not at the inspection site. Instead, Promatech presented another equipment, a Powerplus backhoe and Alicon breaker, which it claimed to have almost the same specifications as that of the subject equipment.

The BAC decided not to proceed with the inspection, because primarily, the equipment is not available. Instead, it filed a Post-Qualification Evaluation Report indicating a "non-responsive" finding on Promatech's compliance with technical specifications. Thereafter, a notice of post-disqualification¹ was sent to Promatech, stating that there was misrepresentation on its part. It is in this context that you are seeking our opinion on whether the BAC's decision on disqualifying Promatech is valid.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) has no jurisdiction to rule over actual controversies relative to the conduct of the bidding

¹ Letter of BAC to Promatech dated 12 March 2012.
² See Letter dated 27 March 2012.

PROCESS, considering that it has no quasi-judicial functions under Republic Act (RA) No. 9184. The determination of the legality and/or validity of the actions and decisions of the BAC including contracts emanating therefrom is not within the express mandate of the GPPB².

However, for your guidance, reference to the rules on post-qualification proceedings under RA 9184 is called for. As stated in our previous opinion³, the objective of post-qualification under Section 34 of RA 9184 is to determine whether the bidder complies with and is responsive to all the legal, technical and financial requirements and conditions specified in the bidding documents. During post qualification, the procuring entity verifies, validates and ascertains all statements made and the documents submitted by the bidder with the LCB or highest rated bid using non-discretionary pass/fail criteria as stated in the bidding documents.

These criteria shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government and private contracts, the goods/product, after-sales and/or maintenance capabilities for the procurement of goods⁴. Hence, the verification emailed under the post-qualification stage is not limited to the examination of documents submitted by the bidder, but includes inspection of the subject equipment *vis-à-vis* the technical specifications specified in the bidding documents.

Based on the foregoing, we opine that the act of the procuring entity in verifying, validating, and ascertaining the conformity of the goods/equipment to be delivered with the technical specifications is in accordance with the verification of technical requirements mandated under the rules for post-qualification. If, on the scheduled date of inspection, the bidder fails to present the subject equipment for examination or evaluation without justifiable cause, the BAC has the prerogative to declare the bidder post-qualified for failure to comply with the requirements. Ultimately, the BAC is the proper authority to determine whether the bidder with the LCB passes or fails the criteria for post-qualification based on its responsiveness to the requirements and conditions as specified in the Bidding Documents.⁵

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 represented. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

DENNIS S. SANTIAGO III
Executive Director III

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³ NPM 002-2011 dated 2 March 2011.
⁴ NPM 69-2007 dated 3 December 2007.
⁵ *Id.* (emphasis supplied).
⁶ Section 34, IRR of RA 9184.



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

NPM No. 131-2012

19 October 2012

HON. ANGELO B. PALMONES
Representative, Agham Perry List
HOUSE OF REPRESENTATIVES
 Quezon City

Re: Single Largest Completed Contract (SLCC) requirement; Joint Venture (JV) Agreements; and Participation of a GPPB representative in the bidding process

Dear Congressman Palmones:

This is in response to your letter dated 24 July 2012, seeking our opinion on whether a contract may be awarded to a bidder who has passed product testing, but has not complied with the SLCC requirement, and whether the SLCC submission of a third party supplier may be credited in favor of JV partners. It is also inquired whether the GPPB can send representatives to aid in conducting the bidding process in Procuring Entity (PE).

It is represented that a government agency conducted competitive bidding for the procurement of equipment, which required product testing. After the opening of bids, several bidders questioned the compliance of a particular bidder, who offered a low bid, with the SLCC requirement. Instead of resolving the written objections of the bidders, the Bids and Awards Committee (BAC) proceeded with the product testing.

Opinion is now sought on whether the BAC is correct in proceeding as it did, without first resolving the issue on the SLCC requirement. Moreover, inquiry is made on whether the issue on SLCC requirement may be disregarded should the equipment pass product testing.

Requests for Reconsideration Must be Resolved Within Seven (7) Calendar Days

Indeed, Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) mandate the BAC to resolve Requests for Reconsideration within seven (7) calendar days from receipt thereof.² However, although the current procurement rules are silent on the impact of the resolution of the Request for Reconsideration on the ongoing procurement activities, we opine that, as in the case of protests provided under Section 57 of the IRR, the bidding process and any of the procurement activities should not be interrupted by the filing of the Request for Reconsideration, but the BAC should resolve the request within the seven (7) calendar day period provided for in the rules.

² Section 55.1, Revised IRR of RA 9184.

We wish to clarify that the term "protest" in Section 57 includes all procedural and remedial processes mentioned in Section 55 of the revised IRR, such as the filing of a Request for Reconsideration, which is a pre-condition for the filing of a Protest. In this regard, as in the case of a Verified Position Paper protesting the decision of the BAC, a Request for Reconsideration that is validly filed should first be resolved before award of contract is made.

A Bidder Should First Pass the SLCC Requirement

The SLCC requirement for goods is provided under Section 23.5.1.3 of the IRR of RA 9184, which states that the bidder must have completed, within the period specified in the Invitation to Bid, a single contract that is similar to the contract to be bid, and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty percent (50%) of the Approved Budget for the Contract (ABC), or at least twenty five percent (25%) in the case of Expendable Supplies.

The SLCC is an eligibility requirement³ which cannot be dispensed with. The eligibility requirements marked out in R.A. 9184 and its IRR are minimum standards imposed to limit public procurement policy to those who are fit and capable to transact with the government.⁴ Through this, the Government is assured that it is not the first time that the prospective bidder will be required to accomplish such an undertaking, and therefore provides the Government a level of security that such bidder, if awarded the contract, will be able to fulfill the contract requirements.⁵

Under the rules, the SLCC documents should be placed by the bidder inside the first envelope together with the other eligibility requirements under Section 23.1 of the IRR of RA 9184, while the financial information/documents required in the Philippine Bidding Documents (PBDs) should be placed inside the second envelope. During eligibility screening, the BAC shall check the submitted documents of each bidder against the checklist of required documents to ascertain if they are all present, using a non-discretionary "pass/fail" criterion, as stated in the Instructions to Bidders.⁶ The "non-discretionary criterion" during the stages of eligibility check entails the presence or absence of a requirement provided for by law or in the bidding documents, such that a complete submission means the eligibility or qualification of the bidder, and the absence of any of the requirements shall mean the automatic declaration of ineligibility or disqualification of the bidder, as the case may be.⁷

A bidder who fails to submit any or all of the required eligibility requirements under the rules will be automatically declared ineligible and shall no longer be considered in the bid evaluation stage of bid evaluation. Thus, it is incumbent upon the BAC to first determine the eligibility of a bidder before proceeding with product testing, as this latter activity presupposes that the bidder has already been declared eligible.

Post-Qualification Includes Product Testing of the Bidder's Goods

Under Section 34 of the IRR of RA 9184, the Lowest Calculated Bid (LCB) shall undergo post-qualification in order to determine whether the bidder concerned complies with and is responsive to all the requirements and conditions as specified in the Bidding Documents. As stated in our previous opinion⁸, the objective of post-qualification is to determine whether the bidder

³ Section 23.5.1.3 of the IRR of RA 9184.
⁴ NPM 139-2004 dated 20 December 2004.
⁵ NPM 620-2005 dated 17 March 2005.
⁶ Section 30.1 of the IRR of RA 9184.
⁷ Section 30 of the IRR of RA 9184.
⁸ NPM 009-2003 dated 19 May 2003.
⁹ NPM 69-2007 dated 3 December 2007.

In the absence of anything to the contrary as to the character of a foreign law, it will be presumed to be the same as the domestic law on the same subject.¹⁵ Thus, under the *Doctrine of Processual Presumption*, in the absence of evidence to the contrary, foreign laws on a particular subject are presumed to be the same as those of the Philippines.¹⁶

In establishing its presence in the Philippines, a foreign corporation may choose to incorporate its own subsidiary as a domestic corporation, in which case, such subsidiary would have its own separate and independent legal personality to conduct business in the country. In the alternative, it may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines.¹⁷

The general rule is that as a legal entity, a corporation has a personality distinct and separate from its individual stockholders or members, and is not affected by the personal rights, obligations and transactions of the latter. The mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated as one entity. If used to perform legitimate functions, a subsidiary's separate existence may be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.¹⁸ The separate personality of the subsidiary may not be disregarded, unless the corporate vehicle is being used to defeat public convenience, justify wrong, protect fraud, or defend crime, which must be clearly and convincingly established and not merely presumed.

Thus, even if the European supplier is the parent company of the Hong Kong subsidiary corporation, the SLCC track record of the former may not be credited in favor of the latter as they have separate and independent legal personalities which must be respected.

The SLCC Track Record of a Branch Office May be Credited in Favor of a Corporation.

A foreign corporation may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines.¹⁹ Hence, a branch that is not separately incorporated is without a separate legal personality from its parent company.²⁰

Thus, if the Hong Kong entity, not separately incorporated, is merely a branch office of the European company, the former is regarded as an extension, and may be credited with the latter's SLCC track record. In such scenario, the Hong Kong entity may be treated as an Agent of the European company for the purpose of submitting a bid. Thus, the Hong Kong entity must be able to show that it has authority to submit the bid for and in behalf of its Principal, the European company.

Functions of the GPPB-Technical Support Office (TSO) vis-à-vis the BAC

In reference to your query on whether a GPPB representative may aid in the procurement process of a PE, please be informed that the functions of the GPPB, particularly, its Technical Support Office (TSO), has been laid down under RA 9184 and its Revised IRR, which involve providing research, technical and administrative support to the GPPB, including: research-based procurement policy recommendations and rule-drafting; development and updating of generic procurement manuals and standard bidding forms; management and conduct of training on

¹⁵ *Lim and Lito vs. Collector of Customs*, 36 Phil. 472.

¹⁶ *Misano v. Brines*, 30 Phil. 467.

¹⁷ *Philippine Deposit Insurance Corporation vs. Citibank N.A. and Bank of America, S.T. & N.A.*, G.R. No. 170290 dated 11 April 2012.

¹⁸ *Philippine National Bank vs. Rimario Group, Inc.*, et. al., G.R. No. 142616 dated 31 July 2001.

¹⁹ *Supra* note 16.

²⁰ *Id.*

complies with and is responsive to all the legal, technical and financial requirements and conditions specified in the bidding documents. During post qualification, the PE verifies, validates and ascertains all statements made and the documents submitted by the bidder with the LCB or highest rated bid using non-discretionary pass/fail criterion as stated in the bidding documents.

These criteria shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government and private contracts, the goods/product, after-sales and/or maintenance capabilities for the procurement of goods.¹⁰ Hence, the verification entailed under the post-qualification stage is not limited to the examination of documents submitted by the bidder, but includes inspection of the subject equipment *vis-à-vis* the technical specifications specified in the bidding documents.¹¹

Product testing is part of the post-qualification stage of the bidding process. Thus, before the BAC could even conduct the product testing, it should ensure that the bidder who will undergo post-qualification has submitted all the legal, technical and financial requirements and the LCB. Ultimately, the BAC is the proper authority to determine whether the bidder with the LCB passes or fails the criteria for post-qualification based on its responsiveness to the requirements and conditions as specified in the Bidding Documents.¹²

SLCC Track Record of a Third-Party Supplier Cannot be Credited in Favor of the JV

As regards your query on whether the SLCC submission of a third party European supplier may be credited in favor of JV partners (Hong Kong and Philippine corporations) and treated as compliance with Section 23.5.1.3 of the IRR of RA 9184, we answer in the negative.

Section 23.1(b) of the IRR of RA 9184 provides that each partner of the JV shall submit the legal eligibility documents but submission of technical and financial eligibility documents by any of the JV partners constitutes compliance. As previously¹³ discussed, the BAC may consider the individual experiences of the JV partners. Since the SLCC is a technical eligibility requirement under the IRR of RA 9184, any one of the JV partners may submit the same as part of the bidding documents.

The submission by one of the partners may be credited in favor of a JV and constitutes compliance with the SLCC requirement under Section 23.5.1.3 of the IRR of RA 9184. However, since a third party supplier is not a JV partner, its SLCC track record could not be credited in favor of the JV.

The SLCC Track Record of a Parent Company Cannot be Credited in Favor of a Subsidiary JV Partner

As regards your query on whether the SLCC track record of the third party European supplier may be credited in favor of the Hong Kong corporation if the former is also the parent company while the latter is a sister company or a subsidiary, we answer in the negative.

¹⁰ *Id.* (emphasis supplied).

¹¹ NPM No. 64-2012 dated 25 May 2012.

¹² Section 34, IRR of RA 9184.

¹³ NPM No. 24-2012 dated 24 February 2012.

procurement systems and procedures; evaluation of the effectiveness of the government procurement system and recommendation of improvements in systems and procedures; monitoring the compliance to the Act and assisting PEs improve their compliance; monitoring the implementation and effectiveness of the Philippine Government Electronic Procurement System (PHILGEPS); and secretariat support²¹.

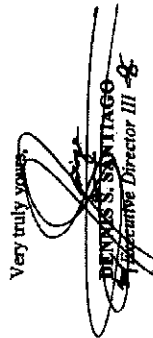
On the other hand, it is the BAC of the PE, which is mandated under procurement laws, specifically, under Section 12.1 of the Revised IRR of RA 9184, which has the sole function to undertake procurement process, and is responsible for ensuring that the PE abides by the standards set forth by the Act and this IRR²².

Hence, it is our position that the conduct of a bidding process is best left to the functions of the BAC, mandated under the law to undertake procurement functions. The GPPB-TSO upholds its mandate to provide support and assistance in the performance of the GPPB's duties and responsibilities specified in RA 9184 and its IRR, which, among others, involve ensuring the proper implementation by PEs of relevant rules and regulations pertaining to public procurement²³.

In sum, we are of the view that (i) filing of a Request for Reconsideration does not interrupt the bidding process, provided, however, that no contract shall be awarded until all Requests for Reconsideration and Protests are resolved; (ii) it is incumbent upon the BAC to first determine the eligibility of a bidder before proceeding with product testing, as this latter activity is part of the post-qualification process of the bidder that has already been declared eligible; (iii) the SLCC track record of a third party who is not a member or a partner to the JV cannot be credited in favor of the JV; (iv) the SLCC track record of the parent company cannot be credited in favor of its subsidiary since they each have a personality distinct from the other; (v) the SLCC of the principal company may be credited to its branch office provided that the latter is not separately incorporated and is authorized by the former as its agent to submit a bid; and (vi) the functions of the GPPB and the GPPB-TSO are limited to procurement policy-making and policy research/ secretariat support, respectively.

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

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III -8



²¹ Section 63.3 of the IRR of RA 9184.

²² Section 12.2 of the IRR of RA 9184.

²³ Section 63.1 of the IRR of RA 9184.

TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City, Philippines 1605

NPM No. 69-2007

3 December 2007

MS. TERESITA A. TAGORDA

BAC Chairperson

ENVIRONMENT MANAGEMENT BUREAU

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Doors 7 and 8, Felbet's Building

Lanang, Davao City

Re : Post-qualification and Eligibility Requirements

Dear Ms. Tagorda:

We refer to your letter dated 29 November 2006 seeking clarification on the following matters:

1. If the bidder subject for post-qualification has no installation yet in the Philippines and that its present installation is located outside of the country, is it mandatory to conduct the verification/inspection where the present installation is located?
2. Is a bidder eligible to join a bidding despite not having completed a contract similar to the contract to be bid but is offering a new brand of equipment under Section 23.11.1 (2) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184), as amended by GPPB Resolution No.07-2006?

Anent the first issue, the objective of post-qualification under Section 34 of R. A. 9184 is to determine whether the bidder complies with and is responsive to all the requirements and conditions for eligibility and the bidding of the contract, as specified in the bidding documents. During the post qualification, the procuring entity verifies, validates and ascertains all statements made and the documents submitted by the bidder with the lowest calculated bid or highest rated bid, as the case may be, using non-discretionary criteria, as stated in the bidding documents.

These criteria shall consider the legal, technical and financial requirements, such as, but not limited to, the bidder's stated competence and experience, the availability and commitment, and/or inspection and testing of the equipment units to be owned or leased by the bidder, the performance of the bidder in its ongoing government

and private contracts, the good/product, after-sales and/or maintenance capabilities for the procurement of goods.

Based on the foregoing, the procuring entity must conduct such verification/inspection where the present installation is located, which may be outside of the Philippines, if the same is a requirement and condition of eligibility and the bidding for the contract, as specified in the bidding documents.

As regards the second issue, Section 23.11.1 (2) of the IRR-A provides that when the item/good to be procured is novel or its procurement is otherwise unprecedented or is unusual, and compliance to the requirement on a largest single similar contract is impracticable, the business or company of the prospective bidder need only be in existence for at least three (3) consecutive years prior to the advertisement and /or posting of the Invitation to Apply for Eligibility and to Bid.


One of the factors that must be considered by the procuring entity under Section 23.11.1 (2) is the novelty of goods which make it impracticable to comply with the requirement on the largest single similar contract. The word "novel" means innovative, different, fresh, original, rare, uncommon, unconventional, or unusual.¹ Under the Intellectual Property Code,² the term "novelty" means that an "invention shall not be considered new if it forms part of a prior art."

If the brand of goods is new to the procuring entity, it does not necessarily make such goods novel. It could be the same type of goods required by the procuring entity but the same is being manufactured by another company, hence the difference in the brands.

Thus, a bidder is ineligible to join the bidding if he has not completed a contract similar to the contract to be bid and he is merely offering a new brand of equipment. The bidder must be able to show that the equipment is novel, unprecedented or unusual and compliance to the requirement on a largest similar contract is impracticable.

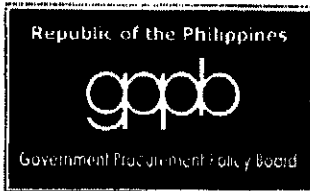
We trust that this clarifies matters. Should you have additional questions, please do not hesitate to let us know.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Webster's Dictionary and Thesaurus (2002).

² Republic Act No. 8293 took effect on 01 January 1998.



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

10 March 2011

PDIR GEORGE Q. PIANO, CEO VI

Director

DIRECTORATE FOR LOGISTICS
PHILIPPINE NATIONAL POLICE
National Headquarters
Camp Crame, Quezon City

W. Villafuerte
PSAFT EMILIANO VILLAFUERTE
NHQ BAC SEC, PNP
Mar 11, 2011 10:49AM

Dear Director Piano:

We refer to your letter dated 3 February 2011 raising several issues relative to the implementation of the provisions of Republic Act 9184 (RA 9184) and its revised Implementing Rules and Regulations (IRR), as follows:

1. Whether the Philippine National Police (PNP) may create only one Bids and Awards Committee (BAC) under Section 11.2 of the IRR of RA 9184 on a full-time regular basis; and
2. Whether the PNP may adopt (a) an initial inspection process where interested bidders are required to submit actual samples for purposes of determining whom will be allowed to buy bidding documents and submit bid; and (b) a "Quality Points Evaluation Process" where valid bids shall simultaneously undergo post-qualification based on technical testing and evaluation parameters with corresponding assigned points.

BAC with Members on a Full-Time Regular Basis

As represented, your office is of the view that PNP procurement can be best attended to by a separate and independent BAC composed of members who shall sit on full-time and regular basis free from the responsibilities and interference of other duties or positions in the PNP inasmuch as ex-officio designation is not advantageous to it in view of frequent changes in its leadership.

Please be informed that the Government Procurement Policy Board, in Resolution No. 01-2011¹, explained that designation of regular members of the BAC on a full-time basis is within the exclusive managerial discretion and accountability of the procuring entity. However, designation of regular members on a full-time basis should not in any way result in the establishment of new *plantilla* positions.

¹ Entitled *Approving the Bangko Sentral ng Pilipinas Customized Procurement Manual Volume 1 – Guidelines on the Establishment of Procurement Systems and Organizations*, dated 28 January 2011.

The *Generic Procurement Manual – Guidelines on the Establishment of Procurement Systems and Organizations (GPM)* also explains that one's appointment to the BAC is in the nature of a designation – an addition to the regular duties of the subject official – and not an appointment contemplated under the Civil Service rules. This clarification is intended to prohibit procuring entities from creating new *plantilla* positions for its BAC members.

Anent the foregoing, please be reminded that designation of officers and employees who shall perform the original functions of the officials designated as BAC members on a full-time basis shall be subject to the rules on civil service. Further, please be advised that BAC members sitting on a full-time basis shall no longer be entitled to honoraria in accordance with the provisions of RA 9184, its IRR, and Department of Budget and Management guidelines² on the matter inasmuch as they are no longer considered to be performing BAC duties as an additional function.

Adoption of Initial Inspection and Quality Points Evaluation Processes

As mentioned in your letter, the PNP desires to procure only those kinds of equipment considered as high quality or technically superior. This is to address its current inventory of equipment that are not high end or technically superior but were nonetheless procured since it passed the technical specifications adopted by PNP.

In this view, the PNP intends to adopt an initial inspection process whereby interested bidders will be required to submit actual samples of the goods that they will offer. The samples will then be subjected to inspection and testing to determine its compliance with the prescribed specifications and standards set by the PNP in the bidding documents. Only those who passed this process shall be allowed to buy bidding documents and submit bid.

In addition to said process, the PNP also intends to adopt a post-qualification process based on technical testing and evaluation parameters using a range of points that will be given to an item depending on its corresponding performance. Points will also be allocated to the price offered by the bidder and the technical performance of the submitted sample. At the end of the process, the bidder with the highest number of points will be awarded the contract.

At the outset, we are of the view that the foregoing processes appear to be inconsistent with the provisions of RA 9184 and its IRR. The initial inspection process conflicts with Sections 23 and 30 of RA 9184 and its IRR in that there is no prior examination of compliance with technical specifications required before a bidder may be allowed to submit its bid. Also, simple eligibility check and non-discretionary "pass/fail" criterion is adopted for purposes of evaluation of bids. The Quality Points Evaluation Process, on the other hand, conflicts with Sections 32 and 34 of RA 9184 and its IRR in that it do not permit the formulation of a separate criteria or a point/grading system for the evaluation and post-qualification of bids in the procurement of goods.

Please note that RA 9184 and its IRR adopt a process that restrain the exercise of discretion to the most feasible and practical extent possible in order to promote the principle of competitiveness in government procurement.

² DBM Budget Circular (BC) 2004-5A as amended by BC 2004-5A dated 7 October 2005, and BC 2007-3 dated 29 November 2007.

As such, the preliminary examination of bids is required to be conducted using a non-discretionary “pass/fail” criterion in evaluating bids.³ For the same reason, the rules require an exclusive set of documents based on which a bidder’s legal, technical, and financial capability to undertake a project is assessed.⁴ Competition is further stimulated with the requirement that any interested bidder may obtain bidding documents from the procuring entity’s website and at the Philippine Government Electronic Procurement System from the time the Invitation to Bid for the project is issued.⁵

This should not, however, be taken to mean that procuring entities are bound to accept sub-standard and low quality goods. RA 9184 and its IRR brim with provisions empowering procuring entities to establish and adopt a set of performance parameters and technical specifications that guarantee it will obtain products and services at par with their acceptable requirements before their exercise of discretion is limited during the evaluation process.

Procuring entities are required to meticulously and judiciously plan their procurement activities for its operations and requirements.⁶ This early, end-users are expected to identify the most appropriate specifications and parameters for its requirements. During the development of the bidding documents, they identify the minimum specifications and terms that will adequately meet their needs,⁷ they have the discretion to identify what contracts may be considered similar to their procurement activity,⁸ and they may require inspection and testing for compliance with the specifications during post-qualification.⁹ Prior to the advertisement or issuance of the Invitation to Bid, the procuring entity also confirms that the specifications and parameters are acceptable to it.¹⁰ It is also given the opportunity to revise and correct the specifications and parameters prior to the deadline for the submission and opening of bids.¹¹

These processes not only ensure that the procuring entity conducts the bidding process free from bias and undue discretion, but also foster efficiency and transparency. These processes also highlight the fact that procuring entities have ample control over the quality and performance of goods it will obtain inasmuch as it has the discretion to adopt the acceptable specifications and parameters against which offers will be evaluated.

These acceptable specifications and parameters provided by procuring entities in their bidding documents become the bases for the inspection and testing of samples submitted by the bidder with the Lowest Calculated Bid for purposes of post-qualification. This aims to encourage interested bidders to submit their proposals while allowing procuring entities to assure the quality and technical superiority of the goods.

In view of the foregoing, we strongly urge the PNP to refrain from adopting the proposed processes. Instead, we encourage the PNP to follow the prescribed processes in RA 9184 and its IRR and identify the most suitable and appropriate technical specifications and

³ Section 30, RA 9184 and its IRR.

⁴ Section 23, RA 9184 and its IRR.

⁵ Section 17.5, IRR, RA 9184.

⁶ Section 7.1, IRR, RA 9184.

⁷ Section 17.2, IRR, RA 9184.

⁸ Section 23.5.1.3, IRR, RA 9184.

⁹ Section 34.3 (b) (iii), IRR, RA 9184.

¹⁰ Section 20.1, IRR, RA 9184.

¹¹ Section 22.5, IRR, RA 9184.

performance parameters that will assure it of the desired level of quality of the goods it intends to procure.

We hope to have provided sufficient guidance on the matter. Should you have further need of our assistance or require clarification on additional concerns, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dennis Lorne S. Nacario', written over a horizontal line.

DENNIS LORNE S. NACARIO
OIC-Executive Director III



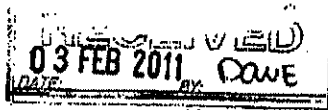
Republic of the Philippines
Department of the Interior and Local Government
National Police Commission
NATIONAL HEADQUARTERS, PHILIPPINE NATIONAL POLICE
DIRECTORATE FOR LOGISTICS
Camp Crame, Quezon City



C-1847

MR. DENNIS L NACARIO
Executive Director
GPPB-Technical Support Office
Unit 2504 Raffles Corporate Center
F Ortigas Jr. Road
Ortigas Center, Pasig City

FEB 03 2011



Dear Mr. Nacario:

We write to seek the assistance and support of your good Office in connection with the continuing efforts of the Philippine National Police (PNP), under the present leadership of POLICE DIRECTOR GENERAL RAUL M BACALZO, to enhance its procurement system and ensure that only high quality or technically superior equipment could be procured within the capability of its annual budget.

We are of the view that PNP procurement, regardless of the source of funds, could best be attended to by a separate and independent Bids and Awards Committee (BAC) composed of members who shall sit on full-time and regular basis free from the responsibilities and interference of other duties or positions in the PNP. At present, membership to the PNP National Headquarters Bids and Awards Committee (NHQ BAC) was in an ex-officio capacity, meaning whoever is designated to the following positions, namely: The Deputy Chief, PNP for Administration, The Director for Logistics, The Director for Operations, The Director for Comptrollership and the Deputy Director of Legal Service, ipso facto became members of the NHQ BAC. While the situation is permitted by the Revised IRR of RA No. 9184, it is not advantageous to the PNP organization in the long run because, among others, it prevents procurement proficiency given the frequent changes in the leadership of the PNP.

Thus, may we therefore inquire whether the PNP could create and establish only one (1) BAC the composition of which shall be consistent with Section 11.2 of the Revised IRR of RA No. 9184 who shall serve on full time and regular basis and who shall be free from other duties and responsibilities while serving as BAC members for a term of not less than one (1) year that could be extended as may be appropriate.

The next issue that we would like to raise is the desire of the PNP to procure only those kinds of equipment considered as high quality or technically superior. In line with the Section 10 of RA 9184, the chief method of procurement in the PNP is through competitive bidding. But the present inventory of equipment in the PNP, particularly firearms, will show that some are not high end or technically superior but were nonetheless procured because the price was within the approved budget for the contract, if not the lowest price, and the equipment offered passed the post-qualification process for complying with the technical specifications, which serves only as the minimum standards.

As a matter of procedure, the bidder with the lowest calculated bid is always first to undergo the post-qualification process and if it passes, it shall then be declared as the bidder with the lowest calculated responsive bid. By specific provision in Section 37.1.1 of the Revised IRR of RA No. 9184, **"The BAC shall recommend to the Head**

of the Procuring Entity the award of contract to the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid or the Single Calculated/Rated responsive Bid after the post-qualification process has been completed". From the point of experience, goods coming from China are cheaper than those coming from the United States of America and members of the European Union. The situation, however, is reversed in terms of quality and technical superiority, especially in case of firearms and other equipment which are crucial to the day to day operations of the PNP.

To address the foregoing situation, the PNP would like to adopt the following procedures, if they are not inconsistent with the provisions of the Revised IRR of RA No. 9184, to wit:

1. Initial Inspection Process-

How done: Interested bidders shall be required to submit actual samples of the goods that they will offer and the same shall be subjected to inspection to determine whether conforming to the prescribed specifications and testing the same whether it meets the minimum prescribed standards based on stated parameters which shall form part of the bidding documents. Only those who passed the initial inspection process shall be allowed to buy bidding documents and to submit bids.


2. Quality Points Evaluation Process-

How done: The BAC shall specify the caveat in the Invitation to Bid that price alone is not the sole consideration for the award of contract. Thus, all the bidders who submitted valid bids shall simultaneously undergo post-qualification based on stated technical testing and evaluation parameters with corresponding assigned points. Example: the pistol which shall meet only the minimum requirement or barely pass a specific parameter shall receive only the minimum point and the best performer shall receive the maximum points. By way of further illustration, the BAC may allocate 40 points to PRICE and the remaining 60 points to the TECHNICAL PERFORMANCE based on parameters with specific assigned points. At the end of the process, the bidder with the highest number of points will be awarded the contract, who may not necessarily be the bidder with the lowest calculated bid or the one with the lowest calculated responsive bid, but nonetheless one with a high quality or technically superior equipment.

POLICE SENIOR SUPERINTENDENT LURIMER B DETRAN and ATTY ERMILANDO O VILLAFUERTE, who are members of the NHQ BAC Secretariat, will see you at your most convenient time and elucidate some more on the matters which the PNP would like to consider to enhance its procurement process.

Thank you very much.

Very truly yours,


GEORGE Q PIANO, CEO VI
Police Director
The Director for Logistics



Republic of the Philippines
 Department of the Interior and Local Government
 National Police Commission
NATIONAL HEADQUARTERS PHILIPPINE NATIONAL POLICE
BIDS AND AWARDS COMMITTEE
 Camp Crame, Quezon City



INVITATION TO BID

The Philippine National Police (PNP) invites all PNP registered and non-registered suppliers to bid for the following items:

ITEM/DESCRIPTION	APPROVED BUDGET FOR CONTRACT [PHP]	PRICE OF BID DOCUMENTS [PHP]	SUBMISSION/ OPENING OF BIDS
1. PUBLIC BIDDING NO: PNP-11-02G			February 22, 2011 @2:00 PM
One Hundred (100) units Patrol Utility Vehicles	108,000,000.00	44,000.00	
2. PUBLIC BIDDING NO: PNP-11-03G			February 23, 2011 @2:00 PM
1 Lot Modern DNA Equipment	16,099,024.00	11,000.00	
3. PUBLIC BIDDING NO: PNP-11-04G			February 23, 2011 @2:00 PM
One Hundred Sixty (160) Rappelling Ropes	11,904,000.00	8,000.00	
4. PUBLIC BIDDING NO: PNP-11-05G			February 23, 2011 @2:00 PM
Five Hundred (500) units Binoculars with Range Finder	17,650,000.00	12,000.00	
5. PUBLIC BIDDING NO: PNP-11-06G			February 23, 2011 @2:00 PM
One Thousand (1,000) units Gas Mask with Filter	14,500,000.00	10,000.00	

Bid documents shall be available at the **BAC Secretariat, Office of the Directorate for Logistics, 2nd Floor, NHQ-PNP Building, Camp Crame, Quezon City from February 4, 2011 until the deadline of submission of bids** to interested bidders upon payment of the non-refundable amount indicated above. It may also be downloaded free of charge from the website of the Philippine Government Electronic Procurement System (PhilGEPs) and the website of the Procuring Entity, provided that Bidders shall pay the nonrefundable fee for the Bidding Documents not later than the submission of their bids.

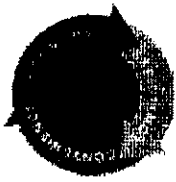
The **Pre-Bid Conference** shall be held at the **PNP Main Conference Room, 3rd Floor NHQ-PNP Building, Camp Crame, Quezon City on February 10, 2011 at 2:00 PM**. Only bidders who purchased the bidding documents from the BAC Secretariat can participate in the Pre-Bid conference.

The bidders shall drop their bids in the bid box located at the **PNP Main Conference Room, 3rd Floor, NHQ-PNP Camp Crame, Quezon City on or before the date and time indicated above**. For Modern DNA Equipment, brochures of the items/equipment duly authenticated by the supplier must be presented. For Rappelling Ropes, Binoculars with Range Finder and Gas Mask with Filter, ~~sample prototype should be presented/ submitted, on or, before the opening of bids.~~ For the Patrol Utility Vehicles, ~~prototype sample must be submitted/ presented one day prior to the opening of bids~~ to the Technical Working Group for initial inspection, test and evaluation as part of the eligibility requirements. Noncompliance is a ground for disqualification.

For more information, please contact the NHQ-BAC Secretariat at telephone number **723-04-01 loc 3009/3664**.

The PNP reserves the right to waive any formality in the responses to the eligibility requirements and to this invitation. The PNP further reserves the right to reject any and all proposals, or declare a failure of bidding, or to cancel the bidding at any stage of the procurement process, or not to award any contract, and makes no assurance that contract shall be entered into as a result of this invitation. Price alone shall not be the sole consideration for the award of contract. Other factors relevant to the purpose and use of the equipment shall be taken into consideration to determine the offer most advantageous to the PNP.

PERFECTO P PALAD, PESE
 Police Deputy Director General
 Chairman, NHQ-BAC



Bid Notice Abstract

Invitation to Bid (ITB)

Reference Number 1411915
Procuring Entity PHILIPPINE NATIONAL POLICE
Title Supply and Delivery of One (1) lot Modern DNA Equipment
Area of Delivery Metro Manila

Solicitation Number: PNP-11-03G Trade Agreement: Implementing Rules and Regulations Procurement Mode: Public Bidding Classification: Goods Category: Engineering and Laboratory Testing Equipment Approved Budget for the Contract: PHP 16,099,024.00 Delivery Period: 90 Day/s Client Agency:	Status	Closed	
	Associated Components	3	
	Bid Supplements	1	
	Document Request List	13	
	Date Published	05/02/2011	
	Last Updated / Time	13/02/2011 18:33 PM	
	Closing Date / Time	22/02/2011 14:00 PM	
	Contact Person:	LURIMER B DETRAN Head, NHQ-PNP BAC Secretariat Camp Crame Quezon City Metro Manila Philippines 63-2-7230401 Ext.3664 63-2-7220637 nhqbacpnp@gmail.com	
	Description Please see attached file for details.		

Pre-bid Conference

Date	Time	Venue
10/02/2011	2:00:00 PM	PNP Main Conference Room, 3rd Floor NHQ-PNP Building, Camp Crame QC

Created by LURIMER B DETRAN
Date Created 03/02/2011

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