**NPM No. 12-2011**

8 June 2011

**MR. GERARDO A.I. ESQUIVEL**
*Administrator*
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM
4F Administration Bldg., MWSS Complex, Katipunan Ave.,
Balara, Quezon City

Dear Sir:

We respond to your letter dated 10 May 2011, which was received by our office on 12 May 2011, seeking opinion as to (i) whether a local consulting firm can engage the services of foreign individual experts for a locally-funded project, or (ii) whether foreign consulting firms may participate in the bidding despite the project being locally-funded in nature.

As represented, the Angat Hydro-Electric Power Plant has been operating for about three decades when PHIVOLCS announced that the West Valley Fault, which runs 200 meters east of the main dyke, is potentially active. Thus, any movement may affect the local fault and cause adverse effect to domestic water supply, irrigation and direct safety risk. The Metropolitan Waterworks and Sewerage System (MWSS), together with other stakeholders of the Angat Dam and Dyke, have agreed to engage the services of a consulting firm with experience and manpower expertise to provide the necessary consulting services with regard to dam and dykes safety and remediation works. It was stated in your letter that the consulting works are found to be extraordinary and the first of its kind in the Philippines. In this regard, engagement of foreign individual experts (*i.e.*, Dam Engineer, Geotechnical Engineer, Seismic Specialist, and Dam Instrumentation) is being proposed for some components of the entire consulting services requirement. Said project is locally-funded with an Approved Budget for the Contract amounting to PhP70 Million.

Section 24.3.3 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184 and Item 4.2 of General Principles on Consulting Services[1] prescribe the hiring of Filipino consultants whenever the services required for the project are within the expertise and capability of Filipino consultants. In such instances, the IRR limits the participation in bidding for consulting services to Filipino citizens/sole proprietorships and entities with at least 60% Filipino ownership/interest.[2] If, however, the head of the procuring entity determines that Filipino consultants do not have the sufficient expertise and capability

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[1] Annex B of the IRR of RA 9184
[2] Section 24.3.1 of the IRR

to render the services required under the project, foreign consultants may be allowed to participate.

It will be noted that the nationality requirement in the case of organizations or consulting firms pertains to the entity and not to the key staff/personnel that will actually perform the consulting service. The engagement of foreign key staff/personnel is, however, qualified by Section 24.3.3 (b) of the IRR to the extent that when the types and fields of consulting services in which the foreign consultant wishes to engage involve the practice of regulated professions, the foreign consultant must be authorized by the appropriate Philippine professional regulatory body to engage in the practice of those professions and allied professions.

In view of the foregoing, we are of the view that foreign consulting firms may participate in the bidding only if the head of the procuring entity has determined that there is no Filipino consultant/consulting firm that has sufficient expertise and capability to render the services required under the project. Otherwise, the bidding shall be limited to Filipino consultants and entities with at least 60% Filipino ownership/interest. It should be pointed out, however, that these entities are not precluded from engaging foreign individual experts as part of its key staff/personnel provided that the rules on practice of regulated professions and allied professions are complied with.

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

Very truly yours,

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