

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office
Mezzanine 125, Mabini Hall, Malacañang, Manila
Telefax Nos. (02) 735-4962; (02) 736-5758

NPM No. 017-2004

February 20, 2004

MR. REGAN D. UNGCO
President
Filboot Manufacturing Corporation
285 M. Almeda, Pateros, Metro Manila

Re: **Request for consideration on the application of eligibility requirement under R.A. 9184 and its IRR-A**

Dear Mr. Ungco:

This refers to your letter dated December 3, 2003, addressed to the Government Procurement Policy Board ("GPPB"), requesting for consideration on the application and implementation of one of the eligibility criteria for the procurement of goods embodied under Section 23.11.1(2) of the Implementing Rules and Regulations Part A ("IRR-A") of Republic Act No. 9184 ("R.A. 9184"), which provides:

The value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the period specified in the invitation to Apply for Eligibility and to Bid, and similar to the contract to be bid, must be at least fifty percent (50%) of the approved budget for the contract to be bid.

It must be stressed that compliance with the above-cited eligibility criteria is a condition *sine qua non*, an imperative, for a bidder to be declared eligible to participate in the bidding proper, such that failure to conform thereto leaves the procuring entity with no other recourse but to declare the prospective bidder ineligible. This acceptance is very clear in Section 23.6 of the IRR-A of R.A. 9184, to wit:

The **determination of the eligibility** shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and **using the criteria stated in Section 23.11** of this IRR-A: (emphasis supplied)

As Section 23.6 of the IRR-A of R.A. 9184 is very clear and emphatic on the bases of the eligibility of a prospective bidder, we believe that the waiver or the suggested relaxation of one of the eligibility criteria under Section 23.11.1, that is, "the value of the prospective bidder's largest single contract must be at least fifty percent (50%) of the approved budget for the contract to be bid" is not possible at the moment. Considering that the language of Section 23.6 is couched on mandatory terms, prospective bidders must comply with the said requirement to be able to participate in the procurement process, in this case, the bidding of the 95,088 pairs of combat shoes for the Armed Forces of the Philippines ("AFP").

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA

Executive Director