

NPM No. 45-2007

14 August 2007

MS. MA. LOURDES M. JOSE

Managing Head

Procurement and Property Department

PHILIPPINE AMUSEMENT AND GAMING CORPORATION

1330 Roxas Boulevard, Ermita, Manila

Re: Eligibility Requirements of Foreign Bidders

Dear Ms. Jose:

We refer to your letter dated 24 January 2007 requesting for opinion on whether the documents submitted by foreign bidders which were duly authenticated by the Philippine Consulate are deemed sufficient for the purpose of complying with Republic Act No. 9184 (R. A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

We understand from your letter that in the bidding for the supply and delivery of various gaming chips, you required the authenticated or "consularized" certificate of authenticity of all the documents to be submitted by foreign bidders. You likewise required the equivalent Audited Financial Statements (AFS) and income tax returns (ITR) from the country of origin of the foreign bidder. However, during the opening of the bid, the AFS and the ITR submitted did not bear the stamp of receipt by the relevant government office in the country of origin. Moreover, the ITR was in a foreign language.

Section 23.7 of the IRR-A states:

"23.7. In the case of foreign manufacturers, suppliers, distributors and contractors, the eligibility requirements for items (a), (b), (c), (d), (e), and (i) under Class "A" Documents may be substituted by the appropriate equivalent documents issued by the country of the foreign manufacturer, supplier, distributor or contractor concerned, which documents must be duly acknowledged or authenticated by the Philippine Consulate therein."

Based on the afore-quoted section, the following eligibility documents may be substituted by the appropriate equivalent documents issued by the country of origin, which must be duly acknowledged and authenticated by the Philippine Consulate therein:

- a. Department of Trade and Industry business name registration or Securities and Exchange Commission registration certificate, whichever may be appropriate under existing laws of the Philippines;
- b. Valid and current Mayor's permit/municipal license;
- c. Taxpayer's Identification Number;
- d. Statement of the prospective Bidder that it is not "blacklisted" or barred from bidding by the Government or any of its agencies, offices, corporations or local government units, including non-inclusion in the Consolidated Blacklisting Report issued by the Philippine Government;
- e. Other appropriate licenses as may be required by the procuring entity concerned such as the ITR and business tax returns; and
- f. The prospective bidder's audited financial statement, stamped "received" by the Bureau of Internal Revenue or its duly accredited and authorized institutions, for the immediately preceding calendar year, showing, among others, the prospective bidder's total and current assets and liabilities.

Please note that said provision allows the substitution of the foregoing documents by the appropriate equivalent documents in the country of origin. Additional requirements, for instance, that the documents be stamped "received" by the relevant government agency, need not be strictly adhered to. Application of this provision should recognize the rationale of said requirement and the differences between documentation and filing procedures observed in other countries and those of the Philippines.

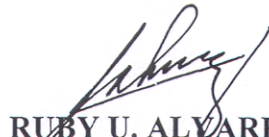
Considering the foregoing, we opine that the submission by the foreign bidder of a "consularized" certificate of authenticity of the relevant documents is deemed sufficient with the requirement of Section 23.7 of the IRR-A.

Finally, unless it has been specified in the bidding documents that all documents should be in English, the supplier/bidder cannot be rated as failed for submitting an ITR not translated into the English language.

This opinion is being rendered on the basis of the facts and particular circumstances as represented.

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

Very truly yours,


RUBY U. ALVAREZ
Executive Director III