

REPUBLIC OF THE PHILIPPINES  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
Technical Support Office  
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**NPM No. 052-2004**

April 20, 2004

**MR. PELAGIO P. NACIONALES**

General Manager  
Scan Marine Inc.  
Honorio Lopez Blvd., Balut,  
Tondo, Manila

**Re : Conduct of Bidding for the Procurement and Installation of Equipment for Vessel Traffic Management System ("VTMS") at the Port District of Manila of Philippine Ports Authority ("PPA")**

Dear Mr. Nacionales:

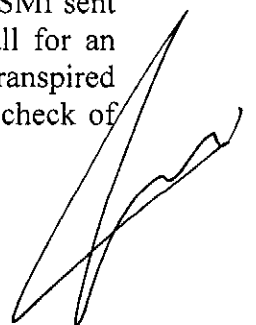
This refers to your letter dated March 5, 2004, which we received on March 10, 2004, requesting for assistance to resolve the following issues to wit:

1. Whether or not the PPA Bids and Awards Committee ("BAC") failed to comply with the procurement rules and procedures prescribed in Executive Order No. 40 ("E.O. 40"), Series of 2001 and its Implementing Rules and Regulations ("IRR"), particularly Section 16.3 thereof;
2. Whether or not the Government Procurement Policy Board ("GPPB") may advise the PPA that the award of contract to the winning bidder be held in abeyance pending the GPPB's response on the aforementioned issue.

These issues were raised in connection with the conduct of bidding for the VTMS Project of the PPA.

**GPPB has no Quasi-judicial Functions**

Although it is the GPPB's function to ensure the proper implementation of R.A. 9184, the IRR-A and all other relevant rules and regulations pertaining to public procurement, it must be noted that the GPPB has no quasi-judicial powers and functions, hence it cannot investigate facts or ascertain the existence of facts, hold hearings and make determinations of facts and exercise discretion of a judicial nature. Considering that the issues raised, based on the representations made by Scan Marine Inc. ("SMI") in a series of letters, which SMI sent to PPA and The Office of the President of the Philippines, would necessarily call for an adjudication upon the merits and an examination of the veracity of the events that transpired during the bidding of the VTMS Project, especially, in the conduct of "eligibility check of



prospective bidders," we believe that the matters raised are beyond the GPPB's jurisdiction to resolve.

Hence, the aforementioned issues are outside GPPB's recommendatory powers of rendering policy and non-policy opinions on specific queries regarding the application of Republic Act No. 9184 ("R.A. 9184"), its Implementing Rules and Regulations Part A ("IRR-A") and other procurement laws, rules and regulations.

### **GPPB cannot suspend/defer the Award of Contract**

With respect to your request if the GPPB may advise the PPA BAC to defer or suspend the award of contract to the winning bidder pending the GPPB's response to the aforementioned issues, we regret to inform you that such request cannot be granted. Although it is a mandate for the GPPB to ensure the proper implementation of the procurement rules and procedures, the GPPB opts not to interfere with the decisions made by the procuring agency in its actual conduct of procurement proceedings since the law gives the BAC and the head of the procuring agency, the task to make intelligent actions and decisions in the conduct of its procurement activities, consistent with the provisions of existing procurement laws.

However, it may be worthy to note that a prospective bidder who receives unfavorable decisions from the BAC is not without recourse. Section 46.1 of the IRR of E.O. 40 is quoted hereunder, to wit:

Decisions of the BAC in all stages of procurement may be appealed in writing by the bidders to the head of the agency concerned. The appeal must be filed within seven (7) calendar days from the date the BAC has reached a decision and issued a Resolution. The head of agency, whose decision shall be final, shall decide on the appeal within seven (7) calendar days from receipt thereof. The appeal shall be resolved strictly on the basis of the records of the BAC. The appeal shall not delay the bidding process but it must be resolved before any award is made.

As such, it would have been more appropriate if SMI availed of the remedy mentioned in the aforementioned provision instead of asking a resolution from the GPPB on the issues raised since, to reiterate, these are beyond the GPPB's jurisdiction to resolve.

With the foregoing elucidations, we trust that our opinion has provided the SMI the needed information in its participation in the bidding for the procurement of the VTMS Project of PPA.

Very truly yours,

  
**JOSE MARTIN C. SYQUIA**  
Executive Director