

NPM No. 65-2009

17 December 2009

GIL C. LOQUILLANO

Consultant

ISOMETRIC INDUSTRIAL CORPORATION
29th Floor, Cityland Pasong Tamo Tower
2210 Don Chino Roces Avenue
Makati City

Re: Additional Eligibility Requirements

Dear Mr. Loquillano:

We respond to your letter dated 24 November 2009 seeking clarification on the additional eligibility requirements for the "Bidding for the Supply, Delivery, Testing, Installation and Commissioning of Port Security Equipment" currently being conducted by the Philippine Ports Authority (PPA).

Specifically, you are inquiring whether the PPA, as the procuring entity, can require, through the issuance of a bid bulletin, the submission of additional eligibility documents which must be authenticated and notarized by the Philippine Embassy/Consulate in the Manufacturer's country, in view of the deletion of Item 17.1 of the Implementing Rules and Regulations Part A (IRR-A) in the revised IRR and paragraph 3.1 of GPPB Circular No. 01-2008

At the outset, we wish to inform you that the Government Procurement Policy Board ("GPPB") and its Technical Support Office ("TSO") only render policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions¹ under the law. It cannot dictate upon, nor interfere with the functions of the Bids and Awards Committee since these solely fall within their authority as sanctioned by law, but with the concomitant responsibility that they perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.

¹ *Quasi-judicial is defined as the term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law, 1999 Ed., p. 216 citing Lupungco v. CA, 160 SCRA 848, series of 1988*

Hence, the determination of a bidder's qualification, eligibility and compliance with the requirements for a procurement opportunity lies within the responsibility and discretion of the Bids and Awards Committee (BAC) of the procuring entity concerned.

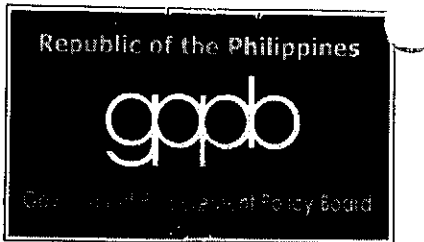
Concomitant however, to the BAC's performance of its functions, is the responsibility of the bidders, among others, to raise at the opportune time (i.e. within the periods prescribed by law), any request for clarification on the bidding documents.

Nonetheless, for guidance purposes, we would like to point out that under the revised IRR, the list of minimum eligibility requirements has been streamlined/simplified, such that those not included in the enumeration are no longer necessary for purposes of determining bidders' eligibility. The rationale afforded by the GPPB for this is to allow for greater participation and enhanced competition among prospective bidders, as well as to reduce transactional costs.

We trust that this sufficiently addresses your concern.

Very truly yours,

Rubens C. Penano
for **RUBY U. ALVAREZ**
Executive Director III



TECHNICAL SUPPORT OFFICE

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

27 November 2009

GIL L. LOQUILLANO

Consultant

ISOMETRIC INDUSTRIAL CORPORATION

29th Floor, Cityland Pasong Tamo Tower,
2210 Don Chino Roces Avenue
Makati City, Philippines

Re: Additional Requirement through Bid Bulletin

Dear Mr. Loquillano:

We respond to your letter dated and received on November 24, 2009 inquiring on the following issues:

1. In view of the deletion of item 17.3 of the Implementing rules and Regulation Part A (IRRA) in the revised Implementing Rules and Regulations (IRR), can the procuring entity still require the submission of these additional documents?
2. In GPPB Circular no. 01-2008 dated March 7, 2008, Paragraph 3.1 states that "As a general policy, imposition of additional eligibility or technical documents is discouraged because it increases cost and reduces competition." Is the PPA exempt from this policy?

Specifically, your office represent that a public bidding was conducted by the PPA and a Bid Bulletin was issued requiring additional documents to be submitted by each bidder which are not included in the original Bid Documents. These documents as you said, must be authenticated and notarized by the Philippine Embassy/ Consulate (with Consular Seal) in the Manufacturer's country.

At the outset, we wish to inform you that the Government Procurement Policy Board (GPPB) and its Technical Support Office (TSO) cannot act beyond the statutory limits of our conferred authority just to accommodate convenience and practicality. The GPPB as an agent of the legislature is limited to the jurisdiction and powers expressly granted to it or necessarily implied from the provisions of R.A. 9184, which created such body. It must strictly perform its legal mandate through sound policy formulation within the limits of its delegated quasi- legislative authority, and enforce the mandatory provisions of R.A. 9184 and its revised IRR.

It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions under the law. Thus, it cannot dictate to the BAC how to conduct its bidding and the related activities pertinent thereto.

Nonetheless, for guidance purposes, we would like your good office to take note of the following;

Section 23.1 of the revised IRR of RA 9184 provides that the Documents to be submitted is limited to the Legal, Technical and Financial Documents using the forms prescribed in the Bidding Document, with this regard further clarification of the said document is not necessary and admits no exceptions.

For your second question, Section 4.1 of the revised IRR of RA 9184 provides that the revised IRR shall apply to all procurement of any branch, agency, department, bureau, office, or instrumentality of the GOP, including government-owned and/or – controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs).

Furthermore Section 23.2 of the revised IRR provides that in case of foreign bidders, the eligibility requirements under Class “A” Documents may be substituted by the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. A translation of the documents in English certified by the appropriate embassy or consulate in the Philippines must accompany the eligibility requirements under Class “A” and “B” Documents if they are in other foreign language.

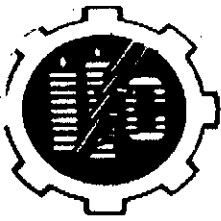
This is the only provision that requires the certification of a consulate in the Philippines or appropriate embassy. However, other documents which are required by the revised IRR and bidding documents to be under oath can be notarized by the consulate of the Philippines and appropriate embassy such as the following:

1. Section 23.1 (b) of the revised IRR of RA 9184
2. And the Omnibus Sworn Statement.

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



Isometric Industrial - E-mail,

29th floor, Cityland Pasong Tamo Tower, 2210 Don Chino R
Tel.: 02 8924165/66 Fax 02 8924167 E-mail: info@isometric

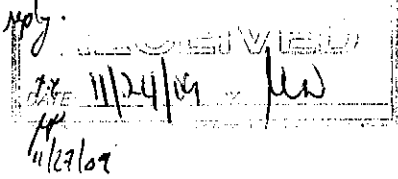
Pls. handle. Sign in
my behalf.

11/26/09

November 24, 2009

Thank,

Pls. draft reply.



GOVERNMENT PROCUREMENT POLICY BOARD

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

Gentlemen:

This is with reference to the "Bidding for the Supply, Delivery, Testing, Installation and Commissioning of Port Security Equipment" that is currently being conducted by the Philippine Ports Authority.

In the Bid Bulletin No. 1 issued last November 19 by the Agency, a copy of which is herewith attached, additional documents were required to be submitted by each bidder (please refer to attachment). These documents must be authenticated and notarized by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country. Please note that these were not included in the original Bid Documents.

Our questions are:

1. In view of the deletion of Item 17.3 of the old RA 9184 IRR in the revised IRR, can the procuring entity still require the submission of these additional eligibility documents?
2. In GPPB Circular No. 01-2008 dated March 7, 2008, Paragraph 3.1 states that "As a general policy, imposition of additional eligibility or technical documents is discouraged because it increases cost and reduces competition."

Is the PPA exempt from this policy? We believe that the Consular authentication and notarization of additional documents that were not even in the original Bid Documents drastically reduces competition as this is a long and tedious process which only a bidder with advanced information can readily comply with.

As the deadline for the submission and opening of bids is on December 01, 2009, other bidders will definitely not have enough time to secure and have the documents consularized, and will be automatically disqualified.

Can the PPA be restrained from imposing these additional requirements?

Thank you and we look forward to your usual prompt reply.

Very truly yours,


Gil L. Loquillano
Consultant

- c) Notarized Certificate of Acceptance/Satisfactory Performance from **at least three (3)** customers from countries outside the country of origin that will serve as proof that the manufacturer has manufactured, supplied and installed a working system in each of these countries, duly notarized and authenticated by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country; and
- d) Any brochures, manuals, data sheets or any materials containing technical specifications coming from the manufacturer as may be required in the Technical Proposal , duly notarized and authenticated by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country.

Certification issued by sales/branch office outside of the Philippines for the supply of the required Port Security equipment **shall not be accepted nor be considered a substitute to the abovementioned manufacturer's certification.**

- e) Certification issued by regional office outside of the Philippines for the supply of the required Port Security equipment shall be accepted, provided, however that the same shall be duly certified by the Manufacturer and duly notarized and authenticated by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country. The bidder may opt to submit a document issued by the Manufacturer certifying that such regional office is authorized to issue the said Manufacturer's Certification that the proposed model of the port security equipment being proposed fully conforms to the technical specifications/requirements indicated in the Terms of Reference, duly notarized and authenticated by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country;

Likewise, each technical document must be under oath and notarized or the manufacturer may opt to submit a single notarized statement for all the technical documents submitted, as long as duly notarized and authenticated by the Philippine Embassy/Consulate (with Consular Seal) in the Manufacturer's country.

3. Terms of Reference/Schedule of Requirements

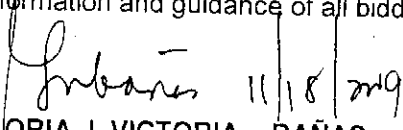
Item H paragraph 1.0 relative to the requirement on the Certificate of Guarantee, the word "**supplier**" should be replaced with "**bidder**".

Item E and F relative to the deployment location of the equipment are hereby modified to wit:

See attached revised Bid Form Technical Proposal

All other provisions not herein modified shall remain in full force and effect.

For the information and guidance of all bidders.


11/18/2019

ATTY. GLORIA J. VICTORIA - BAÑAS
BAC Chairperson



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Bid Notice Abstract

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Invitation to Apply for Eligibility and to Bid

Reference Number 1020379

Procuring Entity **PHILIPPINE PORTS AUTHORITY - HEAD OFFICE**

Title INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

Area of Delivery Metro Manila

[Printable Version](#)

Solicitation Number:	PMD-102109-153	Status	Active
Trade Agreement:	Implementing Rules and Regulations	Associated Components	Order
Procurement Mode:	Public Bidding		
Classification:	Goods		
Category:	Security Surveillance and Detection Equipment	Bid Supplements	4
Approved Budget for the Contract:	PHP 144,900,000.00		
Delivery Period:			
Client Agency:		Document Request List	18
Contact Person:	May de Ausen Romero Clerk Processor A Bonifacio Drive, PPA Head Office Bldg, Mezzanine Flr. South Harbor, Port Area, Manila Metro Manila Philippines 63-2-5278356 Ext.205 63-2-5274729 maydeausen@yahoo.com	Date Published	22/10/2009
		Last Updated / Time	27/11/2009 4:57 PM
		Closing Date / Time	21/12/2009 5:00 PM

Description			
Pls see attached documents for more info/details			
Pre-bid Conference			
Date	Time	Venue	
30/10/2009	1:00 PM	PPA HO BLDG, Bonifacio Drive Function Room, South Harbor, Port Area Manila	

Remarks
Pls see attached Bid Bulletin for more info

Created by May de Ausen Romero

Date Created 21/10/2009



The PhilGEPS team is not responsible for any typographical errors or misinformation presented in the system. PhilGEPS only displays information provided for by its clients, and any queries regarding the postings should be directed to the contact person/s of the concerned party.

[**Contact Us**](#)

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