

NPM No. 043-2016

22 September 2016

[REDACTED]

Re: Secretary's Certificate

Dear [REDACTED]

This refers to your electronic mail inquiring whether the President of the Corporation can sign the Secretary's Certificate as an attachment to the Omnibus Sworn Statement.

Section 25.2(iv) of the Implementing Rules and Regulations (IRR) of R.A. No. 9184 requires the submission of a Sworn Statement by the prospective bidder or its duly authorized representative stating among others, that the signatory is the duly authorized representative of the bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding, covered by a duly notarized Secretary's Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture. This requirement is likewise contained in ITB Clause 12.1(b)(iii) of the Philippine Bidding Documents.

The abovementioned provision of the IRR dictates that during the submission and opening of bids, the one who will represent the bidder – who is a juridical entity - must be equipped with a Secretary's Certificate, stating that he/she is the duly authorized representative of the corporation, partnership, cooperative or joint venture and has full authority to perform all acts necessary and desirable under the circumstances in representation of the bidder.

The Corporation Code¹ enunciates that individual corporate officer cannot exercise any corporate power pertaining to the corporation without authority from the Board of Directors.

¹ Section 25. Corporate officers, quorum. - Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. **The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation.** Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board. Directors or trustees cannot attend or vote by proxy at board meeting




However, we have in many cases recognized the authority of corporate officers or agents to represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon them. This includes the powers or authority expressly granted in the By-laws or Board Resolutions or impliedly through established general practice or policy of the corporation, or as are implied from the express powers.

The President of a corporation is the executive of such juridical entity and is charged with overseeing the complete operation of the organization. The authority to execute the decisions of the Board is lodged in the President of the corporation. As such he may execute a President's Certificate in lieu of the Secretary's Certificate, certifying the authority granted to the representative, and that he/she has been granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the prospective bidder in the bidding. There is no prohibition under the rules that a corporation may submit a President's Certificate instead of the Secretary's Certificate, provided however that the Certification will contain the same language as what is prescribed under the IRR and the Philippine Bidding Documents.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,

(sgd.)

 **DENNIS S. SANTIAGO**
Executive Director V

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