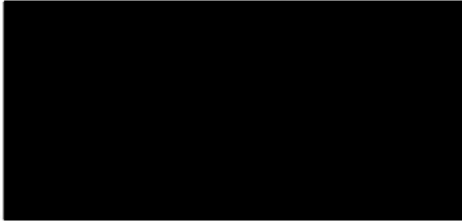


**NPM No. 125-2016**

6 December 2016



**Re: Authentication of Translated Foreign Documents**

Dear 

This is in response to your letter requesting for guidance on the following issues concerning the authentication of translated documents:

1. Whether the Korean Embassy in the Philippines may authenticate the translated foreign documents submitted by the bidder in accordance with Section 23.2 of the Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184;
2. Whether the Bids and Awards Committee (BAC) is authorized to define or interpret specific provisions of the IRR of RA 9184 by providing an additional sentence in the Instruction to Bidders (ITB) of the Philippine Bidding Documents PBD); and
3. Whether Sections 24 and 25 of Rule 132 of the Revised Rules of Court and the ruling in *Merope Enriquez vda. de Catalan v. Louella A. Catalan-Lee*<sup>1</sup> are applicable to bidding activities under RA 9184.

As represented, Eleccom, a Korean company, participated in a public bidding activity conducted by the Department of National Defense (DND) where it submitted its Articles of Incorporation (AOI) as an equivalent eligibility requirement in accordance with Section 23.2 of the IRR. Since the AOI is executed in a foreign language, Eleccom had it translated to English, and had it authenticated by the Korean Embassy in the Philippines prior to its submission. However, Eleccom was disqualified by the DND-BAC since the AOI was not authenticated by the Philippine Consulate in Korea or by the Department of Foreign Affairs (DFA) in the Philippines in accordance with Clause 11 of the Instruction to Bidders (ITB) of the Bidding Documents used by the DND-BAC. As such, the DND-BAC has altered Clause 11 of the ITB by providing its own definition for "equivalent office". It is in this regard that our opinion is sought.

At the outset, the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) do not have the authority to decide on the eligibility of a bidder

<sup>1</sup> G.R. No. 183622, dated 8 February 2012.

and cannot dictate upon nor interfere with the functions of the BAC<sup>2</sup>, which has the authority, and discretion under the procurement law and its associated rules.<sup>3</sup> We likewise do not have the authority to reverse or overrule decisions and acts committed by the BAC. In this regard, we shall limit our discussion on the interpretation of relevant procurement laws, rules and regulations pertinent to the issue presented.

### **Authentication of Translated Foreign Documents**

Section 23.2 of the IRR of RA 9184 provides for the procedure to be observed in the procurement of Goods and Infrastructure Projects when a foreign bidder submits eligibility requirements issued by another country. A similar provision is stated in Section 24.2 for the procurement of Consulting Services. Accordingly, the relevant portions of Sections 23.2 and 24.2 provide:

(...) The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines.

For a better understanding of the requirements, the relevant provisions are summarized and itemized as follows:

1. If a document submitted to be submitted to the BAC is executed in a language other than English, the document must be translated to English.
2. The translation shall be conducted by any of the following:
  - a. The relevant foreign government agency;
  - b. The foreign government agency authorized to translate documents; or
  - c. A registered translator in the country of the foreign bidder.
3. The translated document shall be authenticated by either of the following:
  - a. The appropriate Philippine foreign service establishment or post (*i.e. Embassy of the Philippines in London*); or
  - b. Offices equivalent to foreign service posts which have jurisdiction over the bidder's affairs in the Philippines (*i.e. British Embassy in Manila*).
4. The original document executed in a foreign language and its authenticated English translation must be submitted together.

In view of the foregoing, a foreign bidder may submit documents executed outside the Philippines provided that, if it is not in English, the corresponding translation should also be

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<sup>2</sup> Section 12.1 of the IRR of RA 9184.

<sup>3</sup> NPM No. 08-2014 dated 28 March 2014.

submitted. Accordingly, the translation may only be authenticated either by a Philippine Foreign Service Post abroad, or an equivalent office of the country of the foreign bidder found within the Philippines.

### **Authority of BAC to alter Clause 11 of ITB**

Section 23.2 of the IRR of RA 9184 clearly states requirements needed in accepting translated foreign documents as eligibility requirements. These procedures have also been incorporated into Clause 11<sup>4</sup> of the ITB of the Philippine Bidding Documents (PBD) for Goods.<sup>5</sup> This is the procedure to be adopted by the BAC and is to be used unchanged by procuring entities in the preparation of the Bidding Documents and in accepting translated foreign documents as eligibility requirements.<sup>6</sup>

Accordingly, there is nothing in RA 9184, its IRR, and other allied issuances which empowers the BAC to define terms used in the IRR, or the ITB, for its own procurement activities. If allowed, it would violate the principle of streamlined procedures being espoused the procurement rules as provided under Section 3(c) of RA 9184 and its IRR, and may further result in the submission of different eligibility requirements.

### **Applicability of the Revised Rules of Court**

As discussed in the case of *Merope Enriquez vda. de Catalan v. Louella A. Catalan-Lee*, Sections 24 and 25 of Rule 132 of the Revised Rules of Court provide for admissibility of foreign documents in legal proceedings pending before judicial courts. In this regard, Section 4 of Rule 1 of the Rules of Court specifically provides that its rules are not applicable in cases not specified in the Rules of Court, except simply by analogy or in suppletory character and whenever practicable and convenient. Moreover, in the case of *Manila Electric Company v. National Labor Relations Commission, et al.*,<sup>7</sup> the Supreme Court held that in administrative proceedings, the technical rules of evidence are not strictly adhered to and generally apply only suppletorily. Hence, in the presence of applicable rules, the Rules of Court should not apply as it is only suppletory in character.

In authenticating translated documents, Section 23.2 specified the rules to be complied in order to render the translated foreign documents acceptable as eligibility documents. Since rules on the matter have been provided, the Rules of Court can not apply.

### **Summary**

In sum, Section 23.2 of the IRR allows foreign documents executed in a foreign language to be accepted as eligibility documents provided that its translation is authenticated by a Philippine Foreign Service Post abroad, or an equivalent office of the country of the foreign bidder found within the Philippines. This procedure has been incorporated into Clause 11 of the ITB of the PBD for Goods and may not be altered or amended by the Procuring Entity. Consequently, since Section 23.2 of the IRR and Clause 11 of the ITB clearly provide for the procedures needed for authenticating translated documents, the Rules of Court does not apply in any manner.

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<sup>4</sup> GPPB Resolution No. 04-2014, dated 8 April 2014.

<sup>5</sup> Clause 11, ITB and Clause 9, ITB for Infrastructure Projects and Consulting Services, respectively.


<sup>6</sup> NPM No. 038-2015, dated 10 August 2015.

<sup>7</sup> G.R. No. L-60054, dated 2 July 1991.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

(sgd.)

  
**DENNIS S. SANTIAGO**  
*Executive Director V*

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