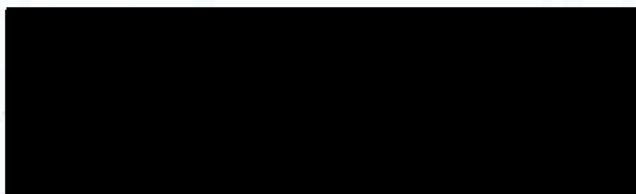


**NPM No. 08-2015**

11 March 2015



**Re: Participation of Foreign Bidders in the Public Procurement**

Dear [REDACTED]

This refers to the Honorable Undersecretary's letter inquiring the requirements and/or restrictions for a foreign national to participate in the procurement process under Republic Act No. 9184, the Government Procurement Reform Act (GPRA).

**Eligibility Criteria; General Rule**

Sections 23.5.1.1 and 24.3.1 of the IRR of RA 9184, enumerate the bidders allowed to participate in public procurement for Goods and Consulting Services, thus:

1. Duly licensed Filipino citizens/sole proprietorships;
2. Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
3. Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
4. Cooperatives duly organized under the laws of the Philippines, and of which at least sixty percent (60%) belongs to citizens of the Philippines; or
5. Persons/entities forming themselves into a joint venture, *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, That Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).

On the other hand, for procurement of Infrastructure Projects, the foregoing limitations likewise apply, except that the interest of Filipino ownership in a corporation, partnership, cooperative or joint venture, shall be at least seventy-five percent (75%)<sup>1</sup>.

### **Participation of Foreign Bidders**

However, by way of exception, foreign bidders may be eligible to participate under any of the following circumstances, as provided by the IRR of RA 9184 and the *Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects (Guidelines)*<sup>2</sup>.

#### *For Goods*<sup>3</sup>:

1. When provided for under any Treaty or International or Executive Agreement as provided under Section 4 of RA 9184 and its IRR;
2. When the foreign supplier is a citizen, corporation or association of a country, the laws of which grant reciprocal rights or privileges to citizens, corporations or associations of the Philippines. In this case, the foreign bidder has to submit a Certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item/product<sup>4</sup>.
3. When the goods sought to be procured are not available from local suppliers;
4. When there is a need to prevent situations to defeat competition or restrain trade.

#### *For Infrastructure Projects:*

1. When provided for under any Treaty or International or Executive Agreement as provided under Section 4 of RA 9184 and its IRR<sup>5</sup>;
2. Where the structures to be built require the application of techniques and/or technologies, which are not adequately possessed by a person/entity that meets the 75% Filipino ownership requirement. In this case, foreign bidders shall form a joint venture where the interest of foreign and Filipino ownership shall not exceed Seventy-Five Percent (75%) and Twenty-Five Percent (25%), respectively<sup>6</sup>.

#### *For Consulting Services:*

Foreign consultants may be hired in the event Filipino consultants do not have the sufficient expertise and capability to render the services required under the project, as determined by the Head of the Procuring Entity. Foreign

<sup>1</sup> Section 23.5.2.1, IRR of RA 9184.

<sup>2</sup> GPPB Resolution No. 18-2005, dated 12 September 2005.

<sup>3</sup> Section 23.5.1.2, IRR of RA 9184.

<sup>4</sup> Section 7.2, Guidelines.

<sup>5</sup> Section 23.5.2.2, IRR of RA 9184

<sup>6</sup> Section 23.5.2.1(e), IRR of RA 9184.

consultants may be eligible to participate in the procurement of consulting services, subject to the following qualifications:

- a) must be registered with the SEC and/or any agency authorized by the laws of the Philippines; and
- b) when the types and fields of consulting services in which the foreign consultant wishes to engage involve the practice of regulated professions, the foreign consultant must be authorized by the appropriate GOP professional regulatory body to engage in the practice of those professions and allied professions: *Provided, however,* That the limits of such authority shall be strictly observed.

At this juncture, it bears stressing that apart from the foregoing eligibility criteria to be complied with by the prospective foreign bidders, they should still submit the legal, technical and financial eligibility documents required for submission under the rules. Foreign bidders are allowed to submit appropriate documents equivalent to the Class "A" Eligibility documents as required under Sections 23.1 and 24.1 of the IRR of RA 9184.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being 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.

(sgd.)

*Executive Director V* *MM*

//skp *Q*