

**NPM No. 44-2015**

9 October 2015



**Re: Section 7.2 of the Guidelines in the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects**

Dear [REDACTED]:

This refers to your email requesting for clarification on Section 7.2<sup>1</sup> of the Guidelines on the Determination of Eligibility of Foreign Suppliers, Contractors, and Consultants to Participate in Government Procurement Projects (Guidelines), specifically on the determination or identification of the relevant foreign government office in the foreign bidder's country that can certify that Filipinos are allowed to participate in that foreign government's procurement activities.

**Relevant Foreign Government Office**

GPPB Resolution No. 34-2014 dated 16 December 2014 amended the Guidelines and removed any reference to Annex "I" with regard to determining which countries grant reciprocal rights to Filipino bidders. The Resolution likewise amended Section 7.2 of the Guidelines, which now requires foreign bidders claiming eligibility to present a Certificate from the relevant government office in its country to prove that Filipinos are allowed to participate in their government procurement opportunities for the same item/product.

Since the bidder is required to produce the Certificate, the onus of identifying and proving the proper authority in the foreign country's jurisdiction lies with the bidder. In *Chua v. Republic of the Philippines*<sup>2</sup>, the Supreme Court ruled that the burden of proof lies with the applicant and not the Government since the lack of mutuality or reciprocity can disqualify him in an application.

A handwritten signature in black ink, appearing to be 'JP'.

<sup>1</sup> Section 7.2. The bidder claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos shall submit a certification from the **relevant government office** of their country stating that Filipinos are allowed to participate in their government procurement for the same item/product. (Emphasis supplied)

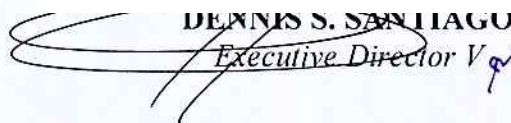
<sup>2</sup> G.R. L-19776, dated 29 September 1964.

Accordingly, the bidder, as the one invoking reciprocity, shall be solely responsible for producing the required Certificate to prove that a similar right exists in favor of Filipinos in its country, and that the specifically identified government office in the bidder's country is the proper authority that has the power and jurisdiction to issue such Certificate.

On the other hand, during post-qualification under Section 34.3(a) of the IRR of RA 9184, the Bids and Awards Committee (BAC) shall verify, ascertain and validate the veracity and authority of the foreign office that actually issued the Certificate pursuant Section 7.2 of the Guidelines.

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.

(sgd.)

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

//sd3/