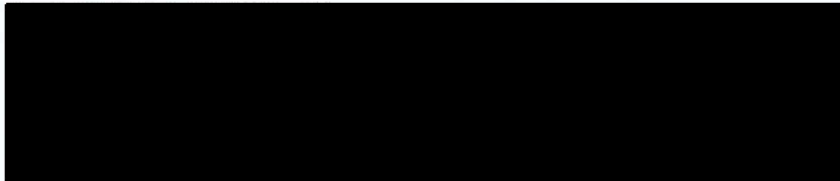


NPM No. 88-2015

13 October 2015



Re: Evaluation of Documents Submitted by Foreign Bidder

Dear [Redacted]

This refers to your email requesting for guidance on the evaluation of eligibility documents submitted by a foreign bidder which were duly authenticated by the Philippine Embassy in Republic of Korea (South Korea).

As represented, the PTNI-BAC conducted a public bidding for the procurement of digital news gathering vans, where it received a bid from a foreign supplier, Digital Solutions and Services Co. Ltd. (DSSC) of South Korea. In compliance with the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, DSSC submitted documents authenticated by the Philippine Embassy in lieu of the required eligibility documents, *to wit*:

1. Certificate of Non-Existence of Appropriate Equivalent Document issued by Sang Hyun Lee, CEO and Corporate Secretary of DSSC, certifying that there is no equivalent Mayor's Permit / Municipal License issued in South Korea;
2. Declaration issued by Sang Hyun Lee, CEO and Corporate Secretary of DSSC, attesting that the Certificate of Non-Existence of Appropriate Equivalent is true and correct; and
3. Certificate on the Reciprocal Right issued by Sang Hyun Lee, CEO and Corporate Secretary of DSSC, certifying that the Korean Government grant reciprocal rights to citizens, corporations, and associations of the Philippines.

In addition to the said documents, DSSC also submitted a Certificate of Business Registration issued in South Korea as a substitute for the registration certificate required under Section 23.1(a)(i) of the IRR of RA 9184. Further, DSSC submitted a Dealer's Permit issued by the National Telecommunication Commission (NTC) under the name of Unioncommunity Philippines, Inc., the Filipino partner of DSSC in compliance with the submission of post-qualification requirements under Section 34.2 of the IRR of RA 9184. Thus, PTNI seeks our opinion whether the said documents are compliant with RA 9184 and its IRR.

At the outset, the GPPB and its TSO have 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. Hence, this office has consistently refrained from passing upon decisions of the Bids and Awards Committee (BAC) in an actual and/or ongoing procurement activity pertaining to the determination of compliance of a bidder with RA 9184 or its IRR.

In addition, under Section 12.1 of the revised IRR of RA 9184, the BAC bears the responsibility of determining the eligibility of bidders and the conduct of the post-qualification proceedings. On this point, Section 34.3 of the same IRR provides that the BAC is mandated to verify, validate, and ascertain all statements made and documents submitted by the bidder with the lowest calculated bid. Hence, this office does not have the authority to determine whether a particular document or requirement submitted by a bidder is compliant with the procurement law and its associated rules since such responsibility rests with the BAC.

Nonetheless, we shall limit our discussion on the relevant provisions of the procurement law, rules and regulations that are pertinent to the issues presented.

Submission of Equivalent Documents Issued by a Foreign Country

Sections 23.2 and 24.2 of the IRR of RA 9184 permit foreign bidders to substitute eligibility documents with the appropriate equivalent documents, if any, issued by the country of the foreign bidder concerned. Only upon actual determination and confirmation of this equivalence may it be categorically resolved by the BAC that the foreign documents submitted are acceptable substitutes of the required eligibility documents. Since the requirements to be replaced are official documents issued by the government of the Philippines or its instrumentalities, the equivalent documents to be submitted by the foreign bidder should likewise be official documents issued by the relevant government office in the bidder's country.

The foregoing rules recognize the possibility that the bidder's country of origin does not issue similar documents in its jurisdiction. Hence, the burden of proving such fact is borne by the foreign bidder, who in turn must submit a certification or official document from the relevant government office of the foreign bidder's country attesting to the non-existence of equivalent documents.

Proof of Reciprocity

Likewise, in proving reciprocal rights, the foreign bidder claiming eligibility by reason of reciprocity should submit a certification from the relevant government office of the bidder's country of origin specifically affirming that Filipinos are permitted to participate in their government's procurement activities for the same item or product.¹ Hence, a sworn statement executed by the foreign bidder signifying such circumstances of reciprocity does not possess sufficient weight as it can be regarded as a self-serving document.

Based on the foregoing, we reiterate that it is the BAC that has the duty and responsibility under RA 9184 and its IRR to verify, validate, and ascertain the statements

¹ NPM No. 004-2011, dated 2 March 2011.

made and documents submitted by the bidder with the lowest calculated bid. Moreover, foreign bidders may substitute the required eligibility documents with the appropriate equivalent documents, if any, issued by the relevant government office in the country of the foreign bidder concerned. In addition, foreign bidders claiming eligibility by reason of reciprocity should submit a certification from the relevant government office of the bidder's country of origin specifically affirming that Filipinos are permitted to participate in their government procurement activities for the same item or product

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 V

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