



PHILIPPINE CHARITY SWEEPSTAKES OFFICE

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SUPPLEMENTAL BID BULLETIN (SBB) NO. 5

SBAC Contract No. 2019-01

Re: Five (5) Years Lease of the PCSO Lottery System (PLS)

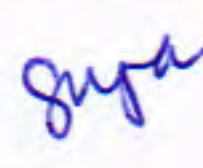
This Bid Bulletin is issued to **CLARIFY** queries/requests to the Special Bids and Awards Committee and other matters for the information and guidance of interested bidders:

A. QUERIES/REQUESTS OF INTERESTED BIDDERS (AS OF JUNE 21, 2019)

NAME	QUERY/REQUEST	CLARIFICATIONS
Pacific Online Systems Corporation (POSC) PCSO OR No. 078988 (5/31/2019) * Letter dated and officially received on June 11, 2019	<i>Network Monitoring Capabilities, page 107, under B. IT Security and Network Monitoring Components:</i> <i>If the specified network requirements (i.e. TLS Offloading solution, Intrusion Detection and Prevention Platform, File Integrity Monitoring Platform, and Web Application Firewall, and HTTP that should be forwarded to an SIEM), are implemented, it will lower the system's transaction processing capability and hamper the 10,000 simultaneous transactions with a 6-second turn-around for all 10,000 terminals as the PLS is a transaction processing engine.</i> <i>Kindly clarify the priority security feature PCSO requires for the PLS.</i>	Bidders must observe and comply with the <i>IT Security and Network Monitoring</i> components of the Project, as stated in the published Technical Specifications.
	<i>3.3 Item 4. Certification, last paragraph, page 137:</i> <i>"[P]rior to final acceptance by the end-user and commercial operations, the winning bidder shall ensure submission of certificate from International System Security Certification Consortium (ISC2) or Global Information Assurance Certification (GIAC) of at least one (1) of its IT Security Personnel to be assigned to PCSO."</i> <i>However, Section V. Special Conditions of the Contract (SCC), Clause 9.2, page 66, states that " The Security Operations Center shall be directly controlled and supervised by PCSO, including the lottery system;" and Clause 9.3 further state that "For check and balance and to maintain the integrity of the leased lottery system, the winning bidder...shall be prohibited from participating in the public bidding of PCSO's Security Operations Center (SOC)."</i>	The PCSO Security Operations Center (SOC) is a separate and distinct project from SBAC Contract No. 2019-01. The requirement for IT Security Personnel is specific for PCSO lottery system, these certificates shall ensure that IT Security personnel to be assigned to PCSO are competent and reliable to protect the system from security threats and effectively handle when they do occur.

POSC	Based on the statements under the SCC section, we believe, that the above mentioned IT Security Personnel with the required credentials should not be part of the deliverables of the winning bidder and should form as part of the SOC of PCSO, to ensure that there will be "for check and balance to maintain the integrity of the leased security system."	
	3.4. Under Part I. Technical Specifications, Item 1. Hardware Architecture, page 102, 5th paragraph, mentions "capable of generating combinations such as but not limited to numbers, symbols & letters" -Kindly elaborate the use of combination of "symbols"	The PCSO Lottery System shall not be limited to online numbers games combination. It must be capable of running non-numeric games using any of the following and/or combination of star symbols, graphic symbols, people symbols, special symbols, as may be required by the procuring entity.
	3.5. Under Part I. Technical Specifications, Item 1. Hardware Architecture., page 102, 6th paragraph, mentions "capable of generating replacement tickets for winning tickets with future draws" -Please confirm if the "replacement" specifically refers to exchange tickets only and not by reprinting of any other tickets for reasons such as lost or damaged.	Yes, these refer to exchange tickets with future draws only and shall not cover reprinting of lost or damaged tickets.
	3.6. Under Part II. Technical Specifications, Item 3.1. Software Components, page 121, Item 3.1.1. Lottery Software Application. "the winning bidder shall, under the supervision of PCSO, develop and install at least one (1) new lottery/digit game and at least one (1) mobile application per year for the whole duration of the contract, free of charge." -There is a need to review the above requirement since the development of new games and/or applications per year would have to undergo a feasibility study and should be aligned with PCSO's strategic game plans for the next 5 years. Thereafter the project deliverables standard on the development and installation of new programs per year should be set by PCSO. -With penalties imposed defined in "Annex A: Support Service", numerous project demands from PCSO might not be feasible to deliver.	Please see Supplemental Bid Bulletin No. 4 (Amendment No.2) dated June 21, 2019.
	Annex A: Support Services queries: 4.1. Software SLA, page 141 – Timeline of implementation for changes shall be... within 4 months for software modification and within 2 weeks for parameter changes...from receipt for PCSO's approval"	Bidders must observe and comply with timelines for software modifications and parameter changes, as stated in the published Technical Specifications.

POSC	-Since software modifications and parameter changes can range from simple to complex, we suggest that a range of timeline be considered for this SLA as follows: i. Four (4) Months to Eight (8) months for software modification ii. Two (2) weeks to Six (6) weeks for parameter changes.	
	Annex C: Lottery Draw Machines and Peripherals. Items A & B for Primary Draw Court and alternate Draw Court -Requiring the same number of draw machines (inclusive of alternate machines) that the Primary Court has for both the back-up draw court and alternate draw court seems to be too much for a single lottery system that is being leased for only 5 years. -May we request that the required number of draw machines be revisited for practicality as these machines are quite expensive compared to lottery terminals.	The procuring entity retains the specified number of draw machines and paraphernalia as a requirement for efficient conduct of daily draws.
Exakt * Letter dated June 4, 2019; officially received by PCSO on June 6, 2019	Whereas, the WLA is an industry body and not all governments or lottery regulators recognize or make it mandatory to the operator under their country of jurisdiction to certify their system as per WLA control standards. The ISO Certification is not absolutely mandated by the regulators everywhere and it is not mandatory in all other countries, as they have their own set of standards which they follow. Our partner is also a WLA member and presently managing its lottery operations in Beijing, China. However, and since they are an active member of WLA, they are not mandated to secure a WLA SCS: 2013 Certification. They possessed an ISO 27001: 2013 Certification for Information Security Management System, however, they are not required to take ISO 9001: 2015 for Quality Management System Standards and a WLA Security Control Standard Compliance from the country which they served.	Bidders are required to include in their respective technical eligibility documents, their WLA SCS: 2016 Certification; <u>OR</u> In the absence of WLA SCS:2016 certification, ALL of the following: 1. ISO 9001: 2015 Certificate 2. ISO 27001:2013 Certificate 3. Certification from any WLA's accredited gaming laboratories that the winning bidder's lottery system is compliant with WLA Security Control Standard: 2016 requirements Further, the WLA is a worldwide, member-based organization that advances interests of the state and provincial lottery companies by advocating the highest ethical principles and supporting its members in achieving their visions. The WLA includes state lottery and gaming organizations from more than 80 countries on 6 continents and has associate members from the supplier industry worldwide. Members, like the procuring entity (PCSO), adhere to the strictest standards of social responsibility, responsible gaming, security and risk management. For this Project, it is the lottery system's security and risk management that is desired to be WLA-SCS: 2016 certified.






Exakt	Furthermore, as specified under Section VII / Part II / E.4 CERTIFICATIONS & E.5, the winning bidder is being given a one (1) year time frame from the start of selling operation to secure the compliance particularly for the WLA SCS: 2016 and ISO/IEC 27001. Therefore, these clearly manifests that the above-mentioned certifications shall only be required not as a technical qualifier during the submission of bids but rather, shall only be required to secure such requirements from the Winning Bidder. We humbly request the SBAC to further clarify the above-cited statements which are all written and present in the bidding documents and/or to allow submission of other eligible Gaming/Lottery Certifications and NOT to restrict the requirements to the aforesaid documents.	The winning bidder's leased PCSO Lottery System including PCSO draw processes must be WLA SCS:2016 certified within one (1) year from PCSO's satisfactory acceptance of Milestone 6 of the Schedule of Requirements for this Project (i.e., within one (1) year from commercial operation of the leased lottery system). See also Supplemental Bid Bulletin No. 4 (Amendment No.2) dated June 21, 2019, on technical eligibility documents of bidders.
	To end with, we request for an extension on the submission of bids of at least three (3) additional weeks from 1 July 2019, to give chance to our foreign participants to secure all the necessary Eligibility and Legal documentations, which requires English Translations including compliance with foreign authentication procedures and other local document processing for the mandatory tax clearance, PhilGeps Platinum registrations and other local eligibility requirements.	Please see Supplemental Bid Bulletin No. 4 (Amendment No.2) dated June 21, 2019.
Mr. Manolito M. Lopez <i>*Letter dated May 30, 2019; officially received by SBAC on June 3, 2019; and the SBAC letter reply sent on June 17, 2019 via LBC.</i>	The PCSO made a grave error in identifying the bidding on the Five (5) Years Lease of the PCSO Lottery System as a Procurement of Goods instead of Procurement of Consulting Services. The PLS bid should have been <u>Mixed Procurement</u> since it involves the procurement of goods (equipment, hardware, etc.) and lottery system. Section 5, Paragraph AA of the implementing Rules and Regulations of Republic Act 9184 provides that <u>"in case of projects involving MIXED PROCUREMENTS, the nature of the procurement shall be determined based on the PRIMARY PURPOSE OF THE CONTRACT."</u> The Primary Purpose of the Contract is the <u>LEASE OF THE SYSTEM</u>. Because of this, it is evident that the bidding for the PCSO Lottery System should be for the Procurement of Consulting Services and not for the Procurement of Goods (Please see attached Annex).	1. In Kilosbayan v. Morato (G.R. No. November 16, 1995), the Supreme Court (EN BANC) instructs that, PCSO's equipment lease agreement (ELA) is a contract to "procure supplies" or similar to the Government's "lease of equipment, such as copying machines, personal computers and the like"; 2. Section 46. Lease Contract, Rule XIV – Lease of Computers, Communications, Information and Other Equipment, 2016 Revised IRR of Republic Act No. 9184 states, "[t]he lease of construction and office equipment, including computers, communication and information technology equipment, are subject to the same competitive bidding and to the processes prescribed under the Act and this IRR. Lease may also cover lease purchases or lease-to-own and similar variations."; 3. Section 5 (r), 2016 Revised IRR of Republic Act No. 9184 is also instructive on the definition and nature of "GOODS" that may be bid, and we quote: "r) Goods. Refer to all items, supplies, materials and general support services, except Consulting Services

Mr. Manolito M. Lopez		and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services, such as, the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related or analogous services, as well as procurement of materials and supplies provided by the Procuring Entity for such services. The term "related" or "analogous services" shall include, but is not limited to, lease of office space, media advertisements, health maintenance services, and other services essential to the operation of the Procuring Entity." 4. Likewise, Section 5 (aa), 2016 Revised IRR of Republic Act No. 9184 provides that, the procuring entity (PE) or PCSO <i>"shall determine the nature of procurement based on the primary purpose of the contract to be bid xxx Procurement shall also include the lease of goods xxx."</i>[See also GPPB NPM 169-2015 (December 29, 2015)]; The procuring entity (PCSO) is the principal government agency mandated under Republic Act 1169, as amended to hold and conduct lotteries and similar activities, with at least 25 years experience in State-run online games. Foregoing considered, the procuring entity (PE) has determined that, this Project's primary purpose is to REPLACE its 9,511 obsolete fixed lottery terminals; and ensure that there will not be any hiatus in the conduct of online games in view of the forthcoming expiration of equipment lease agreements (ELA) of its existing providers.
	<i>The PCSO made it a requirement that the bidder must have installed at least Four Thousand Seven Hundred Fifty-Six (4,756) fixed terminal units, that are active, in commercial operation and connected to a single gaming system, whether located within or outside of the Philippines, for the past ten (10) years. The terminal units are considered as goods which is only incidental to the primary purpose of the contract.</i>	<i>"Additional specifications may be required by the procuring entity as long as it is necessary to meet its needs and must not unduly restrict competition. Moreover, the technical specifications must be based on relevant characteristics, functionality and/or performance requirements, as stated in Section 18 of the 2016 IRR. Accordingly, non-compliance by the bidder with the Technical Specifications would be a ground for disqualification."</i> (GPPB NPM 012-2018 dated April 13, 2018; see also Section 17.2, 2016 Revised IRR of Republic Act No. 9184) For this Project, bidders are required to have delivered; installed; leased; supplied at least 4,756 fixed lottery terminals to guarantee, in the minimum, its experience and capacity to supply the required 10,000 fixed lottery terminals nationwide, within

Mr. Manolito M. Lopez		the duration of the 5 years lease contract to be bid. The 4,756 fixed terminals is based on the procuring entity's historical data as of March 30, 2019 in that, 9,511 fixed lottery terminals are actively selling PCSO online games nationwide. The buffer of 489 fixed lottery terminals to complete the 10,000 units will be used for current and future sales agents (retailers or distributors) within the five years lease contract.
	<i>Although the Law gives preference to Filipino consultants/ developers/ talents, the criteria for the qualification of bidders will deprive them of their right to participate in the said bidding (Please see attached Annex).</i>	1. PCSO complied with Executive Order No. 65, dated October 29, 2018 (11th Regular Foreign Investment Negative List) in relation to Republic Act No. 7042 (Foreign Investment Act of 1991); Republic Act No. 9184 and its 2016 Revised IRR; and Republic Act No. 5183 in crafting the published bid documents, as follows: • "Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens, pursuant to RA 5183"; • "For Joint Venture (JV), Filipino ownership or interest shall be at least 60%. For this purpose, Filipino ownership or interest shall be based on the contribution of each of the partners of the joint venture as specified in their JVA. (Section 23.4.1.1 (e), 2016 RIRR of RA 9184)"; • Foreign bidders are also allowed to participate by reason of their country's extension of reciprocal rights to Filipinos (RECIPROCITY RULE) by submitting a <u>sworn statement</u> which must include/attach a certification from the relevant government office of their country [i.e., equivalent to the Philippine's Department of Foreign Affairs] stating that, "Filipinos are allowed to participate in their government procurement for the same item/product that is the subject of this procurement." [Section 8.5.2, 2016 Revised IRR, RA 9184]. 2. More importantly, the Project is NOT covered by the "11th Regular Foreign Investment Negative List" under Executive Order No. 65, series of 2018.
	<i>The bid price is very high that the Government will lose substantially.</i>	The ABC represents the most practical costing determined by the procuring entity. (GPPB NPM 022-2011 dated December 23, 2011)

Mr. Manolito M. Lopez		The ABC is the CEILING/LIMIT that the PE has determined as reasonable amount to pay for the five (5) years lease of its desired customized PCSO Lottery System (PLS) based on the market study of the costs of its components, current equipment lease agreement (ELA) rentals from its existing providers, and market depreciation costs. Further, the procuring entity is, <i>"prohibited from adjusting the same accordingly from the time the invitation to bid for the procurement project has been issued or advertised until after there has been a second failure of bidding."</i> (GPPB NPM 119-2004 dated August 27, 2004) More importantly, nothing prevents the bidders from submitting lower financial bids from the published ABC; provided, that the required technical specifications are diligently complied with or not compromised.
	<i>The Equipment Lease Agreements (ELA) of the Philippine Gaming Management Corporations (PGMC) and Pacific Online Systems Corporation (POSC) would be expiring this year.</i> <i>The bidding seems to be just an accommodation to the two (2) systems providers as an indirect renewal of their contract or to accommodate possible foreign bidders. It is tailor-fitting as it would be conducted to comply with certain formalities.</i>	1. <i>In this jurisdiction, public bidding is the established procedure in the grant of government contracts;¹</i> 2. Section 3, Article I of the GPRA [Republic Act No. 9184]- the standing procurement law approved on January 10, 2003 - states that "[a]ll procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government-owned and/or-controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles: a. Transparency in the procurement process and in the implementation of procurement contracts. b. Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. c. Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method. d. System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.

¹ Id. at 52

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Mr. Manolito M. Lopez		e. Public monitoring of the procurement process and the implementation of awarded contracts with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications."² 3. In the twin cases of G.R. No. 216098 and G.R. No. 216562 (April 21, 2015), the Supreme Court EN BANC instructs that, "[t]he essence of competition in public bidding is that the bidders are placed on equal footing which means that all qualified bidders have an equal chance of winning the auction through their bids.³ x x x Another self-evident purpose of competitive bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts."⁴; 4. As early as CY 2017, the PE (PCSO) has initiated the public bidding of its lottery system. However, the same was cancelled due to injunctive reliefs secured by its lease provider in Luzon (PGMC) from regular courts. Notwithstanding legal constraints, PCSO remained steadfast by asserting and maximizing available remedies under the law and Rules of Court. Thus, in <i>PCSO v. Hon. Maximo De Leon and PGMC</i> (G.R. Nos. 236577 and 236597, August 15, 2018), the Supreme Court ruled that, "[t]he Philippine Charity Sweepstakes Office may proceed with the bidding process for the Nationwide On-line Lottery System for Luzon;" 5. Further, Section 10 of R.A. No. 9184 provides that, "<u>[a]ll procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.</u>" Likewise, Section 27 of COA Circular 92-386 provides that, "[e]xcept as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive public bidding." Hence, there is a clear mandate by R.A. No. 9184 and COA Circular 92-386 that public bidding is the primary process to procure goods and services for the government;⁵
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²G.R. No. 216098 and G.R. No. 216562 (April 21, 2015)

³Capalla v. COMELEC, 673 SCRA 1, 39 at 53.

⁴Id.

⁵G.R. No. 221134, March 01, 2017

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Mr. Manolito M. Lopez		6. Furthermore, in Lagoc v. Malaga⁶ (G.R. No. 184785, July 9, 2014) the Supreme Court had the occasion to rule that, "[A] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts."; 7. Further still, the published bid documents and its Technical Specifications (TS) were purposely crafted to encourage the widest participation of any and all eligible bidders - <i>whether from within or outside the Philippines; new or existing player in the market</i> - under an open, transparent and competitive playing field or thru public bidding.
	<i>It is a fact that the PCSO Lottery System had been operated only by two (2) service providers namely: PGMC and POSC. These are the only companies that have installed at least 4,756 terminal units that are in active and commercial operation for the past ten (10) years. Glaringly, only these two (2) local service providers or foreign bidders could participate in the bidding. May I humbly ask your office to conduct an investigation on this matter and cancel the said bidding if there are possible violations of laws since the said bidding is imbued with public interest.</i>	PCSO's industry/market study shows that, there are local and foreign lottery businesses <u>OTHER THAN</u> its existing lottery equipment providers for Luzon (PGMC) and Visayas-Mindanao (POSC) who are eligible to participate in the public bidding for this Project: 1. Per 2018 WLA Global Lottery Data Compendium (GLDC), there abounds WLA ASSOCIATE MEMBERS from Asia-Pacific, Europe and Near East, Latin America, and North America and Caribbean, other than POSC and PGMC. WLA Associate Members are suppliers of goods and services to the lottery or sports betting industries whose business practices conform to the aims and objectives of the association. Currently, the WLA has 148 Lottery Members and 73 Associate Members drawn from over 81 countries spanning five continents. For more information, visit, https://www.world-lotteries.org/members/our-members/associate-members); 2. Joint Venture partnerships whether registered or to be registered and/or doing business within or outside the Philippines with 60% Filipino ownership or share; and 3. Any of the system providers of PAGCOR's eGames that are 60% Filipino owned.

Philippine Gaming Management Corporation (PGMC) PCSO OR No. 079002 (6/3/2019) <i>*Letter thru local counsel (Bernas Law Offices); officially received on June 13, 2019.</i>	<i>Under Technical Specifications Part I, are the following meant to be blank?</i> 1.1 Page 114 (E)(1) under Operations; 1.2 Page 115 (E)(5) under Vulnerability Assessment and Penetration Testing by a WLA Accredited Gaming Laboratory; and 1.3 Page 115(E)(6) under PLS Training Requirements.	Yes, the above-mentioned components are meant to be blank under Technical Specifications Part I considering that each bidder's proposed lottery system may provide a unique or customized operating system, vulnerability assessment and penetration testing by various WLA accredited gaming laboratories; and training modules. However, under Technical Specifications Part II, items under these components are specified for which the bidder will issue a Statement of Compliance / Undertaking including the necessary diagrams, brochures, product proposals, quotations, internet printouts, and the like, as applicable. All these shall be submitted together with the eligibility and technical requirements or bid documents.
	<i>Page 103 specifies a "Management Terminal for online lottery terminal problem reporting," of the Technical Specification Part I. We assume that the phrase "problem reporting" pertains to a diagnostic or trouble shooting system. Please clarify whether the required "management terminal for online lottery terminal problem reporting" as diagnostic tool is required to be embedded in the lottery system or may be an external separate system that logs into the lottery system when necessary.</i>	The phrase "problem reporting" pertains to diagnostic or trouble shooting system. The Management Terminal for online lottery terminal problem reportingshould be embedded in the customized lottery system.
	<i>In page 123 of Technical Specifications Part 2 (3.2), the bidder is required to provide "all call-flow diagram for each use case of the PLS as part of PCSO's documentary requirement". Is the phrase "call-flow" intended to be different from or the same as a "process-flow"? Perhaps it would help if both "call-flow" and "process-flow" are defined.</i>	Call-flow is intended to show the messages and replies sent/triggered between different components of the PLS solution across a network, for each type of transaction executed by the entire system. For example, we would want a call flow diagram for transactions that purchase a lotto ticket. The call flow would show where the transaction initiated(user selects a lotto number from a web browser accessing the PLS web service), which PLS software components processes it, while specifying the sequence of processing and what is sent between each component. Call-flow diagrams are the same as process flows or process-flow diagrams.
	<i>In page 137 of the Technical Specifications Part 2, when is the certificate from Project Management Institute required to submitted?</i>	The certificate from Project Management Institute shall be submitted after a bidder has been declared a winner. However, for purposes of bid eligibility for this item, a Statement of Compliance/Undertaking (see Section VIII. Bidding Forms)will suffice.
	<i>I. Subcontracting and Ownership of the Software</i>	The Project contemplates the lease of an all-in, integrated and working lottery system.

PGMC	Paragraph 8(j) of the Invitation to Bid and Section 8.1 of the Bid Data Sheet provide: Paragraph 8(j), Invitation to Bid <u>"Bidders are required to submit their own technical eligibility documents for the purposes of complying with the eligibility requirements. They cannot merely rely on the technical credentials of their subcontractors or any other bidder. The bidders, on their own credentials, shall be technically eligible to participate in government procurement, unless the bidder is a joint venture where the technical and financial capacity of one joint venture partner shall be considered as the technical and financial capacity of all joint ventures. (GPPB NPM No. 165-2015 dated December 22, 2015)"</u> (Emphasis and underlining supplied) Section 8.1, Bid Data Sheet <u>"Except the lottery system (i.e., software, hardware, accessories, peripherals and paraphernalia), subcontracting is allowed; provided, that subcontracting shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project'.</u> Note: 1. The PCSO Lottery System (PLS) contemplates, an ALL-IN working online lottery system [lock, stock and barrel] in that, the bidder's leased lottery system must be functioning with <u>integrated lottery software, brand new hardware/accessories/peripherals and guaranteed telecommunication connectivity nationwide;</u> 2. The sub-contracted works must not or should not exceed 20% of the Contract Price or Project Cost." (Emphasis and underlining supplied) Based on the cited provisions of the TOR, subcontracting of the system is not allowed, and the Bidder cannot rely on the technical eligibility of its subcontractors unless the latter becomes a member of the joint venture of the Bidder. To ensure compliance with such requirements, we request clarification on whether the Bidder is required to be owner of the lottery software, or the manufacturer of the hardware.	Each bidder is presumed and must be expressly authorized and/or duly licensed to lease each and every component (<i>lock, stock and barrel</i>) of the customized PCSO Lottery System, whether coming from within or outside the Philippines. Accordingly, the bidder may either be a supplier; or distributor; or manufacturer; or lessor; or combination of all.
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PGMC	In relation thereto, we request clarification on whether the bidder who commissioned the development of a lottery software pursuant to the PLS bid documents is considered to be the owner of the lottery software following the law that vests ownership of intellectual property with the person who commissioned its creation.	
	II. Eligibility of Foreign Bidders The PLS bid documents prefer Filipino suppliers. However, there are no Filipino manufacturers or owners of lottery systems. In our view, since there are no Filipino suppliers or owners of lottery systems that meet the criteria stated in part I above in relation to Section 8.1 of the bid documents, the TOR unduly restricts competition and is tailor fitted to a bidder who will establish a joint venture with a Filipino investor even if the Filipino majority investor is not engaged in the business of creating, or manufacturing and supplying lottery systems. That scenario where a 60% Filipino-owned corporation that owns or supplies lottery system with a track record for prior completed contracts does not actually exist. Paragraph 3 of the Invitation to Bid provides that "(b)idding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the law or regulation of which grant similar rights or privileges to Filipino citizens, pursuant to RA 5183." For foreign bidders to qualify, foreign bidders are required to submit a sworn statement that must include/attach a certifications from the relevant government office of their country (i.e. equivalent to the Philippine's Department of Foreign Affairs) stating that, "Filipinos are allowed to participate in their government procurement for the same item/product that is the subject of this procurement." Paragraph 8(l) of the Invitation to Bid provides: "Foreign bidders are also allowed to participate by reason of their country's extension of reciprocal rights to Filipino (RECIPROCITY RULE) by submitting a <u>sworn statement</u> which must include/attach	For the illustration, please see Supplemental Bid Bulletin No. 6 (Amendment No. 3) dated June 25, 2019.

PGMC	a certification from the relevant government office of their country [i.e., equivalent to Philippine's Department of Foreign Affairs] stating that, 'Filipinos are allowed to participate in their government procurement for the same item/product that is the subject of this procurement.' [Section 8.5.2, 2016 Revised IRR, RA 9184) xxx" Based on the foregoing, we understand that PCSO requires a specific certification from a foreign government that a lottery system may be leased from a Filipino owner of a lottery system by a certain government ("Certificate of Reciprocity"). As previously stated, the fact is that there are no Filipino owners or suppliers of lottery systems as defined in the TOR. Thus, the Certificate of Reciprocity proceeds from an invalid assumption that there is a Filipino supplier with a prior completed contract track record. We request for PCSO to provide an illustration or example of other countries that will qualify as procuring the same product or activity because the certification also erroneously assumes that all other governments operate the lottery in their territories, do not permit private parties to operate lotteries, and therefore, solely procure lottery systems by lease.	
	This required certification also restricts competition to a bidder that leases lottery systems to a government and is restrictive against a bidder that operates a lottery system, or participates in a joint venture, or sells lottery systems to a government and does not lease a lottery system to a government, or to bidders who supply or lease systems to private lottery operators who are permitted or licensed by foreign governments to operate lottery systems. It is a well-known fact that most government do not operate the lottery and either leave it to the private sector or participate as a joint venture with a private party, leaving the procurement to the private party partner. Many governments also acquire lottery system either partially or entirely by methods other than lease. Additionally, considering that the	1. The "Certificate of Reciprocity" is a requirement under Republic Act No. 5183 in relation to, Republic Act 7042 as amended by RA 8179, also known as the Foreign Investments Act of 1991; 2. Republic Act No. 5183 was adopted in Section 23.4.1.2 (a) and (b), 2016 Revised IRR of Republic Act No. 9184 (GPRA) to qualify Section 23.4.1.1 thereof (i.e., limiting eligible bidders for the supply of goods to 60% Filipino owned corporations or Filipino bidders); 3. The threshold of 60% Filipino ownership and the "Certificate of Reciprocity" that foreign bidders must include in their respective technical eligibility documents cannot be dispensed with since these are required under Republic Act No. 5183; 4. The procuring entity (PE) will not dictate on the form and style of the "Certificate of Reciprocity"; provided,

PGMC	required Certificate of Reciprocity is not required by R.A. 9184 and restricts competition, we respectfully request that the Certificate of Reciprocity be dispensed with and that the TOR delete or remove the requirement of threshold of 60% Filipino ownership. In the alternative, we also request that a reworded Certificate of Reciprocity be permitted to allow the participant of foreign corporations whose governments do not operate lotteries, and, therefore, do not procure online lottery systems or do not lease lottery systems. In this regard, we request that a Certificate of Reciprocity that reads, "Should the (country) Government bid out the procurement of its lottery system, Filipinos will be allowed to participate in the procurement" be considered as compliant with said Certificate of Reciprocity requirement, instead of requiring one, which assumes that the foreign government operates lotteries. Further, considering that other jurisdictions require clearance from the legal counsel of the appropriate government agency (e.g. United States of America) and require at least twenty (20) business days from receipt of request within which to issue and release the certificate of reciprocity, may the Bidder submit the required Certificate of Reciprocity after the submission of bids on 01 July 2019 or during post qualification? Finally, in countries where there are no restrictions whatsoever on the nationality of suppliers to government procurement, there will be no explicit policy that states whether Filipinos can be allowed to participate in such foreign government's procurement. Thus, a certification may be difficult or impossible to obtain simply because there are no procurement restrictions in other countries and the nationality of suppliers is a non-issue.	that the certification contains a statement that, "Filipinos are allowed to participate in their government procurement for the same item/product that is the subject of this procurement[citing Section 8.5.2, 2016 Revised IRR, RA 9184 in relation to Annex 9 thereof]; 5. For this Project, the term "same item/product" under the required "Certificate of Reciprocity" shall mean, <u>lease of a working lottery system</u>; and 6. The "Certificate of Reciprocity" must be included in the bidders' technical eligibility documents before the deadline of submission and receipt of bids, not after or during post-qualification.
	III. Single Largest Completed Contract Section 5.4 of the Instructions to Bidders provides: Unless otherwise provided in the BDS, the Bidder must have completed a Single Largest Completed Contract (SLCC) similar to the Project and the value of which, adjusted, if necessary, by the Bidder to current prices using the	1. The SLCC criterion is required in order to ensure that the government is contracting with an entity that has accomplished at least one project with a value no less than fifty percent (50%) of the contract to be bid. xxxIt is within the discretion of the procuring entity to further define the word "similar" in SLCC requirement because it is in the best position to do so as it knows the technical components needed in the contract to be

PGMC	Philippines Statistics Authority (PSA) consumer price index, must be at least equivalent to a percentage of the ABC stated in the BDS. For this purpose, contracts similar to the Project shall be those described in the Invitation to Bid and ITB Clause 12.1(a)(ii)." As defined, "similar contracts" refer to supply and delivery of installation of GAMING SYSTEMS that are active, operational and connected to a single gaming system, whether located within or outside the Philippines, within the past ten (10) years, reckoned from date of submission and receipt of bids. (See Section 5.4, Bid Data Sheet) Paragraph 8 (b) of the Invitation to Bid provides that "(t)he Bidder must have installed at least FOUR THOUSAND SEVEN HUNDRED FIFTY-SIX (4,756) fixed terminal units, that are active, in commercial operation and connected to a single gaming system, whether located within or outside the Philippines, for the past ten (10) years, reckoned from the date of submission and receipt of bids." Is the required 4,756 installed fixed terminal units part of the requirement to comply with the SLCC? Please confirm that the required 4,756 installed fixed terminal units should be connected to a SINGLE gaming system. Additionally, please confirm the number of sites that the terminals must be located at. As you know, a single casino can qualify with the required number of terminals even if all terminals are located in one venue or building. However, that casino system does not compare with the installation and deployment of the lottery system, which is national in scope, and located at nearly ten thousand (10,000) venues, located at as many sites that are not as controlled as a casino. Item 3.5, Part II (on the requirements for the customized PSCO Lottery System to be leased under SBAC Contract No. 2019-01) of Section 6.2 of the Special Conditions of the Contract provides: "3.5 To determine compliance with the 50% Single Largest Completed Contract ('SLCC') bidders shall submit evidence to establish completed contracts, within the last ten (10) years reckoned from the	bid. However, similarity of contract should be interpreted liberally in the sense that it should not refer to an exact parallel but only to an analogous one of similar category." (GPPB NPM No. 143-2017 dated December 29, 2017); 2. The stipulated VALUE of the single largest completed contract (SLCC) computed at the Consumer Price Index (CPI) of the Philippine Statistics Authority at the time of bid opening shall be the basis of SLCC computation. Further, the SLCC certificate or supporting evidence/s must show, "at least one (1) contract that has been fulfilled, not just completely, but satisfactorily." (GPPB NPM 014-2011 dated September 20, 2011) 3. The number of fixed lottery terminals (4,756) supplied or delivered or installed or combination of all in the past 10 years reckoned from the deadline of submission and receipt of bids is a separate and distinct technical requirement from the SLCC criterion. This criterion is intended to establish the bidder's technical experience and capacity to supply, deliver and install the desired 10,000 fixed lottery terminals within the duration of the 5 years lease contract; 4. The procuring entity will not accept a <i>notarized statement</i> that sets forth the details of SLCC evidences. The SLCC is a technical eligibility that must be established at the time of bid opening and supported by any of the following evidences: MOA/Contract/Agreement, NOA, NTP, Delivery Receipts, Installation Receipts, Official Receipts, Certificates of Acceptance, and similar documents. 5. More importantly, it shall be the direct and exclusive responsibility of bidders to prepare, provide and include documentary evidences for the SLCC criterion, not the procuring entity (PCSO). Here, the procuring entity would like to avoid the absurd situation of preparing any of the bidder's evidence/s to satisfy the SLCC criterion; and later, validating/verifying the same during detailed evaluation to arrive at the lowest calculated bid (LCB) or post-qualification to arrive at the lowest calculated and responsive bid, as the case may be.
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PGMC	<i>last day of submission of bids or July 1, 2019, such as but not (limited) to: Notice to Proceed/Notice of Award/Contract or Agreement/Proof of Installation/Delivery Receipts/Official Receipts and similar documents;" (See pages 67-68, Special Conditions of the Contract.)."</i> <i>May we request that, for the purpose of bid submission, bidders be allowed to submit a notarized statement that sets forth the details requested, subject to post-qualification?</i> <i>The requested documents to support proof of completed contract/s are not documents typically kept in a complete state.</i>	DISCLAIMER: <i>To avoid any insinuations of favoring and/or giving undue advantage in the preparation of required technical eligibility documents, the procuring entity (PCSO) has formally requested the Government Procurement Policy Board's (GPPB) appropriate guidance on the request of PGMC for issuance of SLCC related certification/s.</i>
	IV. Joint Venture <i>Section 12.1(a)(iv) of the Instruction to Bidders requires the submission of a duly notarized statement from all potential joint venture partners in accordance with Section 23.1(b) of the Implementing Rules and Regulations of R.A. 9184 ("IRR"), as follows:</i> <i>"(iv) if applicable, the Joint Venture Agreement (JVA) in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners in accordance with Section 23.1(b) of the IRR."</i> <i>Section 23.1(b) of the IRR provides that "(i)n the absence of a JVA, duly notarized statements from all the potential joint venture partners should be included in the bid, stating that they will enter into and abide by the provisions of the JVA in the event that the bid is successful. xxx"</i> <i>Please provide a sample format for duly notarized statement to be executed by all the potential venture partners.</i>	The PE will not dictate on the style and form of the Joint Venture Agreement; provided, that all disclosures required in the SBAC prescribed JV/ CONSORTIUM DISCLOSURES under Section VIII. <i>Bidding Forms</i> of the published bid documents are clearly stated in the AGREEMENT or can be discerned therefrom. Moreover, the lawyers of the JV Partners are in a better position to formulate and put in writing the limitations and extent of participation of each partner in the JV or Consortium. Please see also Supplemental Bid Bulletin No. 4 (Amendment No. 2) dated June 21, 2019.
	V. Financial Requirements <i>Section 5.5 of the Instructions to Bidders provides that the Bidder may opt to submit a committed Line of Credit in lieu of the requirement to submit a computation of its Net Financial Contracting Capacity (NFCC), which must be equal to the ABC to be bid, calculated as follows:</i> <i>NFCC = [(Current Assets minus current liabilities) (15)] minus the value of all outstanding, or uncompleted portions of the projects under ongoing contracts, including</i>	The procuring entity (PE) will not dictate on the style and form of the committed line of credit (CLC); provided, that: 1. The CLC is issued in the name and favor of the of the procuring entity-Philippine Charity Sweepstakes Office (PCSO); 2. Fully funded equivalent to 10% of the ABC, in Philippine Currency; 3. Confirmed or authenticated by a local (Philippines) universal or commercial bank; and

PGMC	awarded contracts yet to be started, coinciding with the contract to be bid. xxx If the prospective bidder opts to submit a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid. If issued by a foreign universal or commercial bank, it should be confirmed or authenticated by a local universal or commercial bank." Please provide a sample format and language for the committed line of credit to be submitted in lieu of the Bidder's submission of a computation of its NFCC, which must be at least equal to the ABC to be bid. The format and language is required by the bank issuer of the letter of credit in order to comply with the intent of the TOR.	4. "The committed Line of Credit in lieu of NFCC computation must be effective or available on the date of the bid submission. Stated differently, a Line of Credit that shall be effective only at some future time other than on the date of bid submission or has no indicative date when the same shall be available is not compliant with the requirements under Section 23.1(a)(xviii) of the 2016 IRR of RA No. 9184." (GPPB NPM No. 003-2019 dated March 4, 2019)
Kolonwel Trading <i>*Letter officially received on June 17, 2019 by SBAC</i>	May we respectfully request that the scheduled bidding for the above-captions (Five (5) Years Lease of the PCSO Lottery System, SBAC Contract No. 2019-01) subject on July 2, 2019 be moved to August-September, 2019 due to the big clamor of all would be bidders during the pre-bid conference held at the Legend Hotel as the venue last June 3, 2019 because of the tedious authentication process of required documents.	Please see Supplemental Bid Bulletin No. 4 (Amendment No. 2) dated June 21, 2019.
Philippine Gaming Management Corporation (PGMC) PCSO OR No. 079002 (6/3/2019) <i>*Letter from local counsel (Bernas Law Offices); officially received on June 17, 2019.</i>	1. During the pre-bid conference, PCSO reminded the bidders that the tax clearance to be submitted should be one that is issued by the National Office (or Main Office) of the Bureau of Internal Office ("BIR"). However, Revenue Regulations No. 180-2018 issued by the BIR provides: "SEC. 2. AMENDMENT. - ITEMS 4.4.1 AND 4.4.2 (c) of RR 8-2016 shall be amended to read, respectively, as follows: <u>'4.4.1 All applications for the issuance of Tax Clearance in accordance with the requirements under RA No. 9184 and EO No. 398 shall be manually filed with the Collection Division of the Revenue Regional Office where the taxpayer or partnership/corporation is currently and duly registered or with the concerned office under the Large Taxpayers service if the taxpayer is classified as Large Taxpayer, until such time that an on-line application for this purpose has been made available</u>	The tax clearance for this Project must be issued by the appropriate unit/s of the BIR National Office (Main Office, Quezon City, Philippines). If the bidder is under the Large Taxpayer's Division of the BIR National Office, then the tax clearance shall be issued by said unit, unless and except when the BIR designates a separate unit within its Main Office to issue tax clearances for bidding purposes

PGMC	<u>for use of prospective bidders.'</u> xxx." In view of said Revenue Regulations, please clarify that a Tax Clearance issued by the Large Taxpayers Division is sufficient to meet the requirement, and that there is no need for a bidder that is registered as a large taxpayer to secure a Tax Clearance from the National Office (or Main Office) of the BIR because it is the Large Taxpayers Division that is authorized to issue such Tax Clearance.	
	2. Items 1 and 1.1 of the Technical Specifications Part I (For post-qualification evaluation) provide that, "(s)tatements of 'Comply' or 'Not Comply' must be supported by evidence in a Bidder's bid and cross-referenced to that evidence", which evidence shall be "in the form of manufacturer, samples, independent test data, and the like, as appropriate and in accordance with Special Conditions of the Contract." Please confirm whether there should not be a comma between "manufacturer" and "samples", such that it should read as "manufacturer samples";	See also Supplemental Bid Bulletin No. 4 (Amendment No. 2) dated June 21, 2019.
	Please confirm whether PCSO requires the bidders to provide actual samples to prove compliance with the requirement/s. If so, what quality of sample is required, and what must the sample be able to demonstrate?;	Aside from brochures, flyers or audio-visual presentation for products, the bidder may submit manufacturer's un-amended sample/s. The manufacturer's sample must be the ACTUAL or EXACT REPLICA of items that the bidder intends to supply, deliver and install for the PCSO Lottery System (i.e., components, equipment, devices, paraphernalia, etc.).
	Please confirm whether the current lottery system of a bidder should already be compliant with all the technical specifications listed in the bid documents despite the customized specifications and not off-the-shelf products required by PCSO. If so, will a demonstration be required or scheduled?	The Bidder should comply with all the items under Part I. Technical Specifications; and make reference and include in their respective technical eligibility documents, <u>as appropriate</u>, any or all of the following evidence: • System architecture or diagram of the proposed lottery system, etc.; • Contract/Agreement/MOA; NOA, NTP; Delivery Receipts; Installation Receipts; Official Receipts, Certificates of Acceptance, and similar documents; • Certifications (WLA; ISO; any WLA accredited gaming laboratories); • Licenses or written authorization (to sell; distribute; install; use; any of the components of the proposed lottery system to be leased); • Call flow or process flow diagrams; • Brochures, flyers or audio-visual presentation for products or any and all components for this Project, to include

[Handwritten signatures and initials in blue ink]

PGMC		manufacturer's un-amended sales literature; • Manufacturer's sample (i.e., the sample/s must be the exact or replica of the items to be delivered to PCSO); • Unconditional statements of specification and compliance issued by the manufacturer/s or suppliers; • System print outs; • System transactions; • system logs; • system reports; • access control list; • Transaction dump (details); • Product proposals; • Quotations; • Internet print-outs; • Ticket printout/samples; • Floor plan for Data Center and other required civil works; • Independent test data; • Training plan; • Warranties; • Certificates; • Other appropriate documents that the bidder deems relevant and appropriate to satisfy all technical requirements for this Project. However, for Part II. Technical Specifications, the Statement of Compliance/Undertaking as well as the other documentary requirements will suffice. Similarly, kindly note that the actual demonstration of the bidder's proposed working lottery/gaming system shall be required during the Post Qualification.
	<i>If no demonstration will be required, what will the post-qualification evaluation be based on, if all that the bidders will submit are documents;</i>	PCSO Lottery System shall not be limited to numbers games combination but may also include non-numeric games using any of the following or combination of star symbols, graphic symbols, people symbols, special symbols, etc. for online games running the leased lottery system.
	<i>Is the post-qualification evaluation conducted before or after the award of contract to the successful bidder?</i>	Post-qualification shall be conducted after the Procuring Entity's detailed evaluation of bids, to arrive at the Lowest Calculated Responsive Bid (LCRB). It is the bidder with LCB that the will be subject to post-qualification procedures, as described under RA 9184.
	2. <i>The Statement of Compliance/Undertaking, as provided for in the Bidding Forms, is worded in the future tense, such that the bidder undertakes" to comply, abide, and provide the required goods with services for SBAC Contract No. 2019-01 xxx".</i> <i>Considering the wording in the Statement of Compliance</i>	All technical documents and evidences required under PART I and PART II of the published bid documents of the Project shall be complied with, as applicable, per item. For PART II, Section VII. Technical Specifications, bidders may submit their duly accomplished "Statement of Compliance/Undertaking" (see prescribed form under Section VIII. Bidding Forms).

	<i>/Undertaking, please confirm that the current lottery system of a bidder need not already be compliant with all the technical specifications listed in the bid documents.</i>	This notwithstanding, the bidder must still, submit such documents that are available and/or referred to under PART II. Technical Specifications, if available. This way, SBAC will be aided or properly guided in the preliminary examination of the bidder's technical eligibilities, to include detailed evaluation of bids to arrive at the lowest calculated bid (LCB).
Genlot <i>*Letter and e-mail query to SBAC from its local counsel (Quisumbing Torres Law Offices); officially received on July 19, 2019.</i>	<u>I. Section I. Invitation to Bid 8 (j)</u> <i>"Bidders are required to submit their own technical eligibility documents for purposes of complying with the eligibility requirements. They cannot rely merely on the technical credentials of their subcontractors or any other bidder. The bidders, on their own credentials, shall be technically eligible to participate in any government procurement, unless the bidder is a <u>joint venture where the technical and financial capacity of one joint venture partner shall be considered as the technical and financial capacity of all joint venturers.</u>" (Underscoring supplied)</i> 1. <i>In the case of an incorporated joint venture ("Incorporated JV") that is yet to be established (to be registered with the Securities and Exchange Commission ("SEC") only if the bidder is awarded the contract), can the technical and financial capacity of one potential incorporated JV partner (or it's parent company) be considered as the technical and financial capacity of all potential JV partners (in the Incorporated JV)?</i>	1. It depends on the extent, terms and conditions of participation agreed upon by the JV partners. Hence, the requirement to accomplish the JV/Consortium Disclosures Form (See Section VIII. Bidding Forms), as attachment to Class "B" legal eligibility documents; 2. If the bidder's Joint Venture or Consortium is not yet registered, a duly notarized statements from all the potential joint venture partners that they will enter into and abide by the provisions of the JVA on the event that the bid is successful. Failure to enter into a joint venture in the event of a contract award shall be a ground for the forfeiture of bid security (Section 23.1(b) of the 2016 Revised IRR of Republic Act No. 9184); 3. As a rule, all JV partners must satisfy and submit all legal eligibilities required for this Project; 4. For technical and/or financial eligibilities, the qualifications of one JV partner may be used and considered as technical and financial capacity of all joint venturers. (Section 23.1 (b), 2016 Revised IRR of Republic Act No. 9184)
	1. <i>If the answer to item (1) above is yes, please confirm that on the basis of Section 23.1 of the IRR, the potential joint venture partners can submit their bid, and if subsequently the project is awarded to them, that the joint venture partners could then set up the Incorporated JV to undertake the project.</i> <i>Kindly advise if there is any period within which the PCSO would require the Incorporated JV to be registered with the SEC following the award of the contract.</i>	1. Among others, the valid JVA shall be submitted within ten (10) days from issuance of Notice of Award. (Section 37.1.4 (a)(i), 2016 Revised IRR of Republic Act No. 9184); 2. GPPB NPM No. 163-2015 dated December 22, 2015 shall also be observed in so far as SEC registration of the Joint Venture is concerned: <i>"1. Whether a Joint Venture is required to be registered with the Securities and Exchange Commission (SEC) prior to award of contract.</i> <i>[A] Joint Venture need not be registered with the SEC in order for it to be eligible to participate in bidding activities. For purposes of the procurement process what is important is the determination of the responsibilities and liabilities of each co-venturer and not the creation of a separate legal entity. Hence, it is sufficient that the bidder submits a valid JVA in the case of</i>

Genlot		procurement of civil works; or, in the case of procurement of Goods and Consulting Services, a valid JVA or a duly notarized statement from all the potential co-venturers stating that they will enter into and abide by the provisions of the JVA in the instance that the bid is successful. 2. If a Joint Venture has been registered, what document shall be required as proof of such registration. Once a Joint Venture has been registered with the SEC, it shall have a distinct and separate legal personality from its co-venturers. Hence, the registered Joint Venture shall submit the appropriate Certificate of Registration issued by the SEC as part of its eligibility documents pursuant to Sections 23.1(a) and 24.1(a) of the IRR of RA 9184, including all the legal, technical and financial requirements relevant to the newly created Joint Venture entity. xxx "
	3. For the purpose of determining compliance with the 60% Filipino outstanding capital stock requirement in the case of an Incorporated JV, please confirm that the requirement will be to have at least 60% of the total voting stock and at least 60% of the total outstanding capital stock ("Twin Test"). Please confirm that in the case of an Incorporated JV, provided that the Twin Test is complied with, (i) the 60% Filipino/40% foreign ratio is not imposed on the monetary value of the respective contributions of the Filipino and foreign shareholders and the joint venture parties can agree on different classes of shares with varying par values, and (ii) the share in the dividends of the respective shareholders can be in proportion to their respective monetary capital contributions.	This project is limited to 60% Filipino owned bidders; however, foreign bidders may invoke "RECIPROCAL RIGHTS" as allowed under Section 23.4.1.2 (a) and/or (b). 2016 Revised IRR of Republic Act No. 9184. For purposes of determining 60% Filipino ownership, the liberal "control test" shall be observed.
	5. As mentioned above, the bidder will be comprised of potential JV partners that will establish an Incorporated JV if the contract is awarded. For purposes of complying with the Class "B" Document, in accordance with Section 23.1 B of the IRR, please confirm that the potential joint venture partners need to submit a JVA setting out the terms for the Incorporated JV that will be established if the contract is awarded. In such case, what would be the essential JVA terms that the PCSO would like to be set out in the JVA? In addition, under Section 23.1 (b) of	1. The informations required in the "Joint Venture/Consortium Disclosures" Form under Section VIII. Bidding Forms must be indicated in the JVA; 2. The procuring entity shall not dictate on the form and style of the JV Agreement; 3. Supplemental Bid Bulletin No. 4 (Amendment No. 2) dated June 21, 2019 in so far as Class B legal documents (JVA) and indicated attachments shall also be observed; 4. The procuring entity desires to have the JVA and/or sworn statement of all JV partners executed and notarized in the Philippines and in English language, to

Genlot	<i>the IRR each of potential JV partners must submit duly notarized statements stating that they will enter into and abide by the provisions of the JVA in the event that the bid is successful.</i> <i>Please advise if there is anything else that needs to be submitted in connection with the JVA requirement under Section 12.1 (a) – Class “B” Document.</i> <i>In this connection, does the notarization have to be executed in Philippines or it can be done by the home country of the JV partner.</i>	spare bidders from tedious authentication of documents from abroad. If the JVA, to include the Board Resolution/Secretary's Certificate authorizing participation in the JV for this Project, are done in the home country of JV partners, the same shall be subject to the language of bidding documents (i.e., translated to English language) and subject to apostillation and/or usual authentication procedures, as required under Republic Act No. 9184 and the Hague Apostille Convention.
	<u>III. Bidder Single Largest Completed Contract requirement – Section 5.4</u> <i>“Unless otherwise provided in the BPS, the Bidder must have completed a Single Large Completed Contract (SLCC) similar to the Project and the value of which adjusted, if necessary, by the Bidder to current prices using the Philippine Statistics Authority (PSA) consumer price index, must be at least equivalent to a percentage of the ABC stated in the BDS. For this purpose, contracts similar to the Project shall be those described in the BDS, and completed within the relevant period stated in the Invitation to Bid and ITB Clause 12.1(a) (ii).”</i> <i>Please confirm if the SLCC may be met by one of the potential JV partners (or it's parent company) in the Incorporated JV.</i>	Single Largest Completed Contract (SLCC) is one of the technical eligibility criterion for this Project. For technical and/or financial eligibilities, the qualifications of one JV partner may be used and considered as technical and financial capacity of all joint venturers. (Section 23.1 (b), 2016 Revised IRR of Republic Act No. 9184)
	<u>IV. Bidder Financial/ Capitalization Requirements -Section 5.5</u> <i>“The Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC), which must be at least equal to the ABC to be bid, calculated as follows:</i> <i>NFCC = [(Current assets minus current liabilities) (15)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started , coinciding with the contract to be bid .</i> <i>The values of the domestic bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR. For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their audited financial statements prepared in accordance with international financial reporting</i>	Section 23.1 (b), 2016 Revised IRR of Republic Act No. 9184 will apply, provided that, “[T]he partner responsible to submit the NFCC shall likewise submit the Statement of all of its ongoing contracts and Audited Financial Statements.”

Genlot	standards. If the prospective bidder opts to submit a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid. If issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a local universal or commercial bank."	
	1. As the bidder will be comprised of potential JV partners who intend to set up an Incorporated JV (if the contract is awarded), would it be possible for one of the potential JV partners or its parent company, to submit a computation of its NFCC to comply with the NFCC requirement?	
	2. In respect of the Line of Credit, as the bidder will be comprised of potential JV partners who intend to set up an Incorporated JV if the contract is awarded, can one of the potential JV partners obtain the line of credit <u>in its name</u> (i.e., in the name of such potential JV partner) for the benefit of the bidder (i.e., the group comprised of the potential Incorporated JV partners), or should the Line of Credit be obtained for the benefit of the <u>bidder itself</u> (i.e., the potential Incorporated JV that will be set up if the bidder is awarded the contract)?	Payments (lease rentals) for this Project shall not be thru letter of credit. The lease rentals shall be in the form of cheques, issued in the name of winning bidder with the lowest calculated and responsive bid (LCRB); and subject to compliance with the usual accounting laws, rules and regulations of the Government of the Philippines. Further, the schedule of payments in the published bid documents shall be strictly observed.
	2.1. If the bidder opts to submit a committed Line of Credit, kindly advise if there is minimum paid up capital that the bidder must have or undertake to have to participate in the bid, in case the bidder is a potential Incorporated JV.	Section 23.4.1.4, 2016 Revised IRR of Repblic Act No. 9184 shall apply.
	2.2. Is there any restriction or requirement under any circumstance for a minimum paid up capital that the bidder must have or undertake to have to participate in the bid, in case the bidder is a potential Incorporated JV.	Section 23.4.1.4, 2016 Revised IRR of Repblic Act No. 9184 shall apply.
	3. Regarding the confirmation or authentication by a local bank', which is referred to in the following sentence: "If issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a local universal or commercial bank." a. Kindly confirm that the confirmation or authentication required is through SWIFT (Society for Worldwide Interbank Financial Telecommunication) authentication which is in the form of a message sent by the foreign issuing bank to a	The committed line of credit (CLC) shall be in such form and style issued by the local (Philippines) universal or commercial bank guaranteeing and authenticating the CLC, and not thru swift code.

	local bank as the local advising bank (such local bank may be a branch of the foreign issuing bank or a correspondent bank or a third party bank).	
Genlot	<u>V. Special Conditions Applicable if Winning Bidder is a Joint Venture and /or Consortium- Section V, II, 27</u> <i>"Joint Venture (JV) and/or Consortium- If and when, the winning bidder is a Joint Venture or Consortium, the following conditions shall be observed:</i> <i>27.1 The Consortium or Joint Venture (JV) partners shall not be allowed to transfer their interests for a period of one (1) year, reckoned from the issuance of Notice to Proceed (NTP) or until the completion and satisfactory acceptance by PCSO of Milestones 1 upto Milestone 6.6.</i> <i>After the above period, any change in the Joint Venture partnership shall be conveyed to PCSO, in writing, within thirty (30) days prior to such change; provided, that any change by and among the Consortium or Joint Venture agreement, partners and/or interests, nature and extent of contributions, and arrangements shall not affect the eligibilities and qualifications of the Consortium or Joint Venture existing at the time of the execution of the lease contract (i.e., legal, technical and financial eligibilities) to include, the partners' capability to perform its obligations, warranties and/or undertakings under the lease contract; and</i> <i>27.2 Each and every member/s or partner/s of the Joint Venture or Consortium shall be jointly and severally liable under and within the duration of the lease contract for the PCSO Lottery System."</i> <i>Please confirm if the foregoing special conditions would be applicable to an Incorporated JV.</i> <i>It appears that the lock-in period would apply but please confirm that the joint and solidary liability will not apply to the shareholders of the incorporated JV (i.e., only the incorporated JV will be liable).</i>	1. The lock-in period will apply to the winning bidder is a Joint Venture, whether the JV is registered or to still be registered; 2. The applicable provisions of Republic Act No. 9184 in relation to Republic Act No. 8799 (2015 Implementing Rules and Regulation of the Securities Regulation Code or 2015 SRC Rules), the Revised Rules of Court of the Philippines, and Alternative Dispute Resolution (RA 9825), and other applicable laws of the Philippines shall be observed in so far as the JV partners being jointly and severally liable are concerned; to include appropriate liability of officers, incorporators, directors and shareholders of the JV partnership.
Philippine Gaming Management Corporation (PGMC)	Please provide examples of evidence that can be submitted by the bidder to establish compliance for requirements that has yet to be agreed upon by the parties and/or requirements that needs to be customized and not readily available to the public.	See pages 19-20 hereof for enumeration of documents or evidences to support compliance with Part I and Part II, Technical Specifications for this Project.

PCSO OR No. 079002 (6/3/2019) *Letter thru local counsel (Bernas Law Offices); officially received on June 21, 2019.		
Genlot *Letter and e-mail query to SBAC from its local counsel (Quisumbing Torres Law Offices); officially received on June 21, 2019.	In respect of the requirement to submit the "PhilGEPS Certificate of Registration and Membership" under Section 12.1 of the Bid Document, may we request your confirmation that in the case of a potential incorporated joint venture, where the potential joint venture partners will participate in the bid (the joint venture corporation to be set up if the contract is awarded to their group), (i) each of the potential joint venture partners will need to submit their respective legal eligibility requirements during bid submission, and (ii) assuming that the group is awarded the contract, the joint venture corporation will only be required to submit a single PhilGEPS Certificate of Registration during the post-qualification period, provided, that they are considered the Lowest Calculated Bidder by the PCSO.	Yes.

B. OTHER MATTERS FOR THE INFORMATION AND GUIDANCE OF INTERESTED BIDDERS

1. Checklist of eligibility documents for submission on or before July 8, 2019 (12 NOON-PST) or deadline for submission and receipt of bids.

NOTE TO BIDDERS:

Follow the sequence of documents below, as table of contents, for Envelopes 1 and 2 respectively. Each and every document mentioned below must have tabs/labels.

FIRST ENVELOPE (LEGAL AND TECHNICAL ELIGIBILITY)

(1) LEGAL DOCUMENTS:

Class "A" Documents:

☐

PhilGEPS **PLATINUM** CERTIFICATE OF REGISTRATION, with reminders and Annex A

NOTE: In lieu of PhilGEPS Platinum Certificate of Registration, all of the following may be submitted:

- ☐ Registration Certificate from SEC/DTI/CDA;
- ☐ Valid and Current Mayor's Permit;
- ☐ Tax Clearance per Executive Order no. 398, series of 2005, as finally reviewed and Approved by the Bureau of Internal Revenue (BIR);
- ☐ Audited Financial Statement stamped "RECEIVED" by the BIR or its duly accredited and authorized institutions, for the preceding calendar year;

Class "B" Document:

- ☐ Joint Venture Agreement (JVA), if applicable;

Note: If the bidder's Joint Venture or Consortium is not yet registered, a duly notarized statements from all the potential joint venture partners that they will enter into and abide by the provisions of the JVA on the event that the bid is successful. Failure to enter into a joint venture in the event of a contract award shall be a ground for the forfeiture of bid security (Section 23.1(b) of the 2016 Revised IRR of Republic Act No. 9184.

- ☐ In the absence of a valid Joint Venture Agreement (JVA), duly accomplished and notarized statements from ALL Joint Venture partners.

The following are required attachment to JVA or notarized statement of all JV partners, in the absence of JVA:

- ☐ Joint Venture/Consortium Disclosure Form (see Section VIII. Bidding Forms)
- ☐ If any of the JV partners is a corporation, a copy of Board Resolution or Secretary's Certificate authorizing participation in the Joint Venture for this Project, to include a provision that it agrees to be jointly and severally liable if the bid is successful; the extent, terms and conditions of its participation; and designation/appointment of the corporation's authorized representative to the JV.

(2) TECHNICAL DOCUMENTS:

- ☐ "Certificate of Reciprocity", if foreign bidder/s invoking reciprocal rights under Section 23.4.1.2 (a) and/or (b), 2016 Revised IRR of Republic Act No. 9184;

(Note: The certificate of reciprocity is not required from 60% Filipino owned bidders)

- ☐ Duly accomplished Statement of all Ongoing Private and Government Contracts, Including Contracts Awarded but not yet started Government

[Handwritten signatures and initials in blue ink]

& Private contracts whether similar or not similar in nature and complexity to the contract to be bid;

- ☐ Duly accomplished Statement of Single Largest Completed Contract (SLCC) within ten (10) Years prior to the deadline of submission and receipt of bids, which is a "similar contract" to the Project; the value of the contract must be equivalent to 50% of the ABC adjusted to current prices using PSA consumer price index (CPI); and with the following attachments:

- *PREFERRED DOCUMENT PER GPPB NPM 014-2011 dated September 20, 2011)-- Certificate of Final Acceptance or Certificate of Satisfactory Completion from client; or*
- *Photocopy of Approved Contract (Service Contract, Purchase Order/Work Order/MOA/Agreement); Official Receipt/s covering the full amount of the contract; Notice of Award, Notice to Proceed, Delivery Receipts, Installation Receipts/Certificates; Official Receipt, and similar documents.*

- ☐ Duly accomplished Net Financial Contracting Capacity (NFCC) computation equivalent to 100% of the ABC; **OR**

- ☐ In lieu of NFCC computation, a committed Line of Credit from a universal or commercial bank equivalent to 10% of the ABC.

Notes:

1. *For NFCC computation, the values of the domestic bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR;*
2. *For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their Audited Financial Statements prepared in accordance with international financial reporting standards;*
3. *If the bidder opts to submit a CLC or Committed Line of Credit (10% of the ABC) in lieu of the NFCC computation, the CLC shall be confirmed or authenticated by a local (Philippines) universal or commercial bank.*

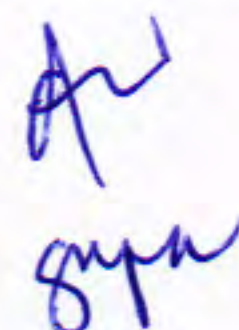
- ☐ Bid Security in any of the following forms:

- *Bid Securing Declaration (See Section VIII. Bidding Forms); **OR***
- *Cash or cashier's/manager's check, bank draft/guarantee (2% of the ABC); **OR***
- *Irrevocable letter of credit issued by a Universal or Commercial Bank (2% of the ABC); **OR***
- *Surety bond (5% of the ABC) with Certificate from Insurance Commission.*

- ☐ Conformity with Section III. Bid Data Sheet; and Section VI. Schedule of Requirements of the Bidding Document

Notes:

1. *Submit a copy of the published Section III and Section VI of the published bid documents, to include SBB No. 4 (Amendment No. 2) Re: Amendments in the Bid Data Sheet;*



2. The aforementioned documents will be signed in each and every page by the bidder and/or his/her authorized representative.

☐ Conformity with Part I and Part II, Section VII. Technical Specifications of the Bidding Document, with the following attachments:

☐ Duly accomplished Statement of Compliance/Undertaking (see Section VIII. Bidding Forms);

☐ Proof of having supplied or delivered or installed or leased 4.756 fixed lottery that are active, in commercial operation and connected to a single gaming system, whether located within or outside the Philippines, for the past ten (10) years, reckoned from date of submission and receipt of bids;

- Photocopy of Approved Contract (Service Contract, Purchase Order/Work Order/MOA/Agreement); **or**
- Certificate of Final Satisfactory Completion or Final Acceptance from the Bidder's client or Official Receipt/s covering the full amount of the contract; **or**
- Notice of Award, Notice to Proceed, Delivery Receipt/Certificate; Official Receipt; **or**
- Installation Receipts/Certificates and similar documents;

☐ WLA-SCS:2016 Certification of the bidder, if any.

Note: In the absence of WLA-SCS: 2016 certification, the bidder may submit ALL of the following certifications:

☐ ISO/IEC 27001:2013 Information Security Management System certificate; **and**

☐ ISO 9001:2015 Quality Management System certificate; **and**

☐ Certification from any WLA accredited gaming laboratories that the winning bidder's lottery system is compliant to WLA Security Control Standard: 2016 (WLA-SCS:2016).

☐ Other documentary attachments or supporting evidences to establish bidders' technical eligibility and compliance with the Technical Specifications of the Project, as applicable:

- Network diagram including list of all components and accessories;
- System design (illustrate the whole lottery system configuration integrating and/or presenting the working lottery system with all components- hardware, software, telecommunication connectivity, linkages between fixed terminals and the computer systems; and to include all accessories, paraphernalia), to include call-flow diagrams, and other requirements as described in the published bid documents;
- Manufacturer's un-amended sales literature (brochures, flyers, product information-education-campaign (IEC) materials), to include audio-visual presentations for products or any of the items required by the procuring entity;
- Manufacturer's samples (i.e., must be actual and/or exact replica of product or items to be supplied to PCSO);
- Independent test data/ results; testing certificates of the lottery system that the bidder is offering to PCSO (i.e., turn-around time, etc.),

unconditional statements of specification; compliance certification/s, issued by the manufacturers; sub-contractors, as the case may be;

- *Ticket printout/samples; Floor plans for civil works; Training Plan;*
- *Disclosures on sub-contractors (TELCO, Civil Works, etc.)*
- *Other documents that bidders may deem relevant and responsive to evidence and/or serve as proof of compliance with each and every item of PART I and PART II of the published Technical Specifications.*

- ☐ Duly accomplished Omnibus Sworn Statement(See Section VIII. Bidding Forms)
- ☐ Duly accomplished and notarized Authority of the Signatory to the bid documents(See "Letter of Intent, Section VIII. Bidding Forms)

Notes:

1. *The "Letter of Intent" must be supported by documentary attachments (Board Resolution or Secretary's Certificate designating bidder's authorized representative; Special Power of Attorney in favor of the named authorized representative; and Government issued ID of the representative with picture and signature or photocopy of valid passport, if the authorized representative is a foreigner.*
2. *Only the bidder's named authorized representative in the "Letter of Intent" shall be authorized to speak and/or answer clarificatory questions of SBAC during bid opening;*
3. *Should the bidder appoint a principal and alternate authorized representatives, the presence of the principal authorized representative shall bar the alternate representatives from speaking on behalf of its principal, the bidder.*

SECOND ENVELOPE: FINANCIAL COMPONENT

- ☐ Financial Bid Form(see Section VIII. Bidding Forms), with ALL of the following attachments:
- ☐ Pricelist, goods offered from the Philippines; and
 - ☐ Pricelist, goods offered from abroad; and
 - ☐ Bill of Quantities
- ☐ If the bidder desires to claim advance payment, in case of successful bid, submit the duly accomplished Bank Guarantee Form for Advance Payment(see Section VIII. Bidding Forms);

Note: The advance payment for this Project shall not exceed 5% of the ABC; and shall be covered by Letter of Credit guaranteed or authenticated by a local (Philippines) universal or commercial bank, in the name and favor of the procuring entity or Philippine Charity Sweepstakes Office (PCSO).

- ☐ If the Bidder claims preference as a Domestic Bidder, under the FLAG Law or the Filipino First policy, a certification from the DTI issued in accordance with ITB Clause 27 shall be required.

3. Protocol/procedures during the deadline of submission and receipt of bids.

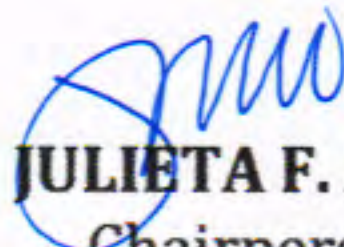
The following procedures relative to the transfer of the bid box and bidders' bid documents from PCSO office to Legend Villas Hotel on the deadline of submission and receipt of bids or on July 8, 2019 at exactly 12:00 NOON (PST) at the Ground Floor, PCSO Conservatory Building located at No. 605 Shaw Boulevard, Mandaluyong City, Metro Manila, Philippines:

- i. **In lieu of the "mother envelope"**, all Bids (both Envelopes 1 and 2---one (1) original and eleven (11) duplicate copies per eligibility documents) must be placed inside a heavy duty, sturdy and durable box;
- ii. The bid "box" shall be properly sealed and marked; and accompanied by the bidder; and upon submission thereof to PCSO, the sequence of arrival of bid boxes shall be recorded by the SBAC Secretariat on a *"first come, first served"* basis on or before the deadline of submission of bids on July 1, 2019 at exactly 12:00 NOON (Philippine Standard Time). **Late bids shall not be accepted;**
- iii. The bidders or their authorized representative (*as named in the bidder's "Letter of Intent", upon purchase of bid documents*) who submitted their bid box before the deadline shall be required to:
 - a) Re-seal their bidder's box in clear cling wrap to be provided by PCSO, in the presence of SBAC, COA and invited observers;
 - b) Sign and attach to their bid box, SBAC's **"Received, intact and in good condition"** sticker. The sticker shall bear the sequence no. of arrival of the bidder's bid box (i.e., date and time the bid box was submitted to and received by SBAC Secretariat) which shall be counter-signed by SBAC Secretariat and PCSO Internal Audit Services representatives and witnessed by COA;
 - c) Witness and escort the bidder's box from PCSO Office to venue of bid opening; provided, that the transport of the bid box and bid documents from the PCSO Office to the venue of bid opening shall be recorded and streamed live in social media; and escorted by SBAC, COA-PCSO other invited observers;
- iv. Upon arrival at the venue of bid opening, the bid box and all bid documents shall be accounted for; and Bidders and/or their authorized representative shall be requested to CONFIRM that their submitted bid box has been safely transported to the venue of bid opening and the same is still, sealed with the SBAC sticker bearing their signature and intact.
- v. Bidders and their authorized representatives are allowed to watch over their respective bid boxes at the venue of bid opening; provided, that PCSO reserves the right to engage the assistance of the Philippine National Police (PNP) and/or the Armed Forces of the Philippines (AFP) to maintain peace and order at the venue of bid opening, and guard the bid boxes.

Let a copy of this CLARIFICATORY Supplemental Bid Bulletin No. 5 dated **June 25, 2019** be published in www.philgeps.gov.ph and www.pcsso.gov.ph, to include conspicuous areas within the PCSO Head Office in Mandaluyong City, Metro Manila.

ALL OTHER MATTERS IN THE PUBLISHED BID DOCUMENTS NOT REVISED/AMENDED OR NOT OTHERWISE INCONSISTENT WITH THIS SUPPLEMENTAL BID BULLETIN ARE HEREBY MAINTAINED BY THIS COMMITTEE.

For the information and guidance of all concerned.


JULIETA F. ASEO
Chairperson

Special Bids and Awards Committee

SBAC Contract No. 2019-01
RE: Supplemental Bid Bulletin No. 5
June 25, 2019

