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**CIRCULAR NO. 01-2008**

March 7, 2008

**TO: Heads of Departments, Bureaus, Offices and Agencies of the National Government, Government Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units**

**SUBJECT: Clarification on the Adoption of Additional Eligibility and Technical Documents to Ensure Compliance with Labor Laws and Other Social Legislation**

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**1.0 Purpose**

This circular is issued to advise government agencies of the following:

- 1.1 Implied repeal of Memorandum Circular No. 80, *Requiring the Submission of Certain Documents and the Incorporation of Certain Provisions in Security and Janitorial Contract Awards*, dated February 10, 1994;
- 1.2 Guiding principles on the adoption of additional eligibility or technical documents, such as clearances from Social Security System (SSS), Department of Labor and Employment (DOLE), Philippine Health Insurance Corporation (PhilHealth), and Home Development Mutual Fund/Pag-IBIG, or a certificate from a relevant government authority that the bidder has no pending administrative or labor case filed against it for violation of labor laws and other social legislation.

**2.0 Republic Act (R.A.) No. 9184 and its Implementing Rules and Regulations Part A (IRR-A) impliedly repealed Memorandum Circular No. 80.**

- 2.1 To ensure compliance with labor laws and other social legislation, Section 25.3 of the IRR-A simply requires the submission of a certificate under oath that the bidder complies with existing labor laws and standards.
- 2.2 On the other hand, Memorandum Circular No. 80 issued by former Executive Secretary Teofisto T. Guingona, Jr. last February 10, 1994

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mandates the submission of the following additional documents: (i) an undertaking to pay their workers at least the minimum wage; (ii) an undertaking to comply with the SSS law on compulsory remittance of SSS premiums; and (iii) a clearance from DOLE and the SSS, as the case may be, that the contractor or bidder has no pending administrative case for violation of the SSS and minimum wage laws, rules and regulations.

- 2.3 To address the inconsistency between these two provisions, and invoking the repealing clause under Section 76 of R.A. 9184 and Section 75 of its IRR-A,<sup>1</sup> it is opined that Section 25.3 of the IRR-A impliedly repealed Memorandum Circular No. 80.

### **3.0 Guidelines on the Adoption of Additional Eligibility or Technical Documents to Ensure Compliance with Existing Labor Laws and Other Social Legislation**

- 3.1 As a general policy, imposition of additional eligibility or technical documents is discouraged because it increases transaction cost and reduces competition. Thus, the additional requirement for bidders to submit clearances from DOLE, SSS, PhilHealth, or Pag-IBIG as part of their eligibility or technical documents should be restrained.
- 3.2 In addition, the requirement that a clearance or certificate be sought from an appropriate government authority that the bidder has no *pending* administrative or labor case filed against it is violative of due process and thereby prohibited. Every person is presumed innocent until found guilty. Further, this requirement allows any person to disqualify a potential bidder by simply filing a nuisance suit before an administrative or labor court.
- 3.3 In lieu of the above requirements, however, and in keeping with the policy of ensuring compliance with labor laws and other social legislation, the procuring entity may, during post-qualification, verify, validate and ascertain the statements made by a bidder in its certificate under oath that it complies with existing labor laws and standards. Specifically, the procuring entity may verify whether the bidder –
- 3.3.1 Complies with the minimum wage mandated by law;
  - 3.3.2 Regularly remits mandated premiums to SSS, PhilHealth, and PAG-IBIG; or
  - 3.3.3 Has been finally adjudged by a court of competent jurisdiction to have violated any labor law or social legislation.

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<sup>1</sup> The last sentence of Section 76 of R.A. 9184 and Section 75 of its IRR-A states: “Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof which are contrary to or inconsistent with the provisions of the Act is hereby repealed, modified or amended accordingly.”

Non-compliance with any one of the above shall be a ground to declare the bidder as "post-disqualified".

3.4 Further, to ensure continuing compliance with labor laws and other social legislation, the procuring entity may require submission of said clearances at specified periods during contract implementation.

4.0 This circular shall take effect immediately.

5.0 For guidance.

  
**ROLANDO G. ANDAYA, JR.**  
Chairperson