

**NPM No. 10-2010**

14 April 2010

**MR. FROILAN R. KAMPITAN**

*Assistant General Manager*

*and Chairman, Bids and Awards Committee*

**NATIONAL HOUSING AUTHORITY**

Elliptical Road, Diliman, Quezon City

**Re : Certificate of No Pending Case**

**Dear Mr. Froilan:**

We refer to your letter dated 4 February 2010 inquiring if there has been any modification, amendment, or revocation of Government Procurement Policy Board Circular No. 01-2008<sup>1</sup>, entitled *Clarification on the Adoption of Additional Eligibility and Technical Documents to Ensure Compliance with Labor Laws and Other Social Legislation*.

As per your representation, the National Housing Authority (NHA) has been included as a respondent in several labor cases and is therefore contemplating on retaining the Department of Labor (DOLE) Certification of No Pending Case as one of its eligibility requirements.

We regret to inform you, however, that the GPPB has neither amended nor revoked its Circular No. 01-2008. Thus, imposition of additional eligibility documents, including the certification of no pending case from DOLE is still proscribed under the present rules.

Requiring a clearance from the appropriate government authority that the bidder has no pending administrative or labor case filed against it during eligibility check is prohibited for reasons both practical and legal. It increases transaction costs for the bidder and, thus, negatively impacts on the competitiveness of a particular transaction. More importantly, it infringes on the bidder's constitutional right to due process and to his or her presumption of innocence. If allowed, any person may simply file a nuisance suit to disqualify an otherwise eligible and qualified bidder.

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<sup>1</sup> Dated 7 March 2008

The NHA, as the procuring entity, however, is not devoid of measures. It may conduct strict post-qualification procedures to verify, validate, and ascertain the statements made by a bidder in its certificate that it complies with existing labor laws and standards. The NHA may also include a provision in its contract with the winning bidder requiring the latter to submit a similar certificate or clearance at specified periods during contract implementation. As a last resort, the NHA may consider blacklisting bidders found to have committed any of the grounds provided in Republic Act 9184 and its Implementing Rules and Regulations.

We hope to have provided sufficient guidance on this matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*