



Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 04-2014

10 March 2014

MR. JERICO T. BORJA, PME
BORJA CONSTRUCTION COORDINATES AND ALLIED SERVICES INCORPORATED
467 Sitio 2 Barangay Patimbao, Sta. Cruz, Laguna

Re: Nature of Procurement

Dear Mr. Borja:

This is in response to your letter dated 6 February 2014, requesting for clarification on whether the “installation” of an air conditioning system is a construction activity and therefore should be properly classified as procurement of an infrastructure project.

It is represented that the Department of Labor and Employment (DOLE) conducted a public bidding for the procurement of the Relocation/Upgrading of the air conditioning system of the 6th and 7th floors of the DOLE Main Building (Project), which it classified and identified under the procurement of goods and services. You sought clarification from DOLE on the propriety of classifying the Project as procurement of goods despite the repeated use of the terms “installation” and “contractor” in the Terms of Reference (TOR) for the Project. The BAC Chairperson clarified that the word “construction” should not be construed as a construction activity in its strict sense, and that the word “installation” is not a construction activity because the scope of installation works as clearly outlined in Part II(B)(29) of the TOR mentions that “the contractor shall install all equipment and facilities”. Despite this, you believe that the Project should be classified as procurement of infrastructure project, adding as a matter of fact, that PCAB requires air-conditioning equipment dealers and suppliers engaged in installation works to secure the relevant license for such scope.

In addressing this concern, we wish to reiterate our position in previous opinions¹, explaining that the PE, ably guided by RA 9184 and its Implementing Rules and Regulations (IRR), is in the best position to determine the correct classification of its procurement activities, whether it be Goods or Infrastructure Projects. When the procurement consists of a mix of goods, or infrastructure project, it shall be considered a mixed procurement, and the nature of the procurement shall be determined based on the *primary purpose of the contract*.²

In case of mixed procurements, Section 5(aa) of the IRR clearly states that the PE may determine its nature based on the **primary purpose** of the contract.³ Thus, the motivation and underlying reason behind the project is of primordial importance as this will dictate the nature and categorization of the procurement and the process and procedures to be adopted moving forward. ~~8~~

¹ NPM No. 88-2013, dated 25 November 2013, citing NPM No. 11-2013 dated 30 May 2011.

² NPM No. 17-2010 dated 1 June 2010.

³ *Supra*.


Accordingly, the classification of the procurement project is incumbent upon the PE to determine. Such determination should be based on the PE's identified needs and the best way by which these needs may be addressed, managed and satisfied. It is from the identified need that the PE then classifies whether the procurement activity is treated as goods or infrastructure project based on the definition of these terms as found in RA 9184 and its IRR.

Thus, the DOLE is in the best position to determine, based on its primary purpose, motivation and intention, and on the nature of the contract, whether the Project should be classified as Goods or Infrastructure Projects. In exercising this responsibility, the PE should be guided by the parameters and conditions in the relevant provisions of RA 9184 and its IRR on what should be considered as Goods or Infrastructure Projects procurement.

For further guidance, please note that under the Generic Procurement Manual (Volume 1)⁴, a "Contractor"⁵ is defined as one who undertakes to perform a work or service, or supply of goods for a public or private entity. Moreover, the same Guidelines recognize "Incidental Services"⁶ as those services ancillary to the supply of the goods, such as transportation and insurance, **installation**, commissioning, provision of technical assistance, training, and other such obligations of the supplier specified in the Contract and the bidding documents.

We hope this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V

//lsd5cno

⁴ Guidelines on the Establishment of Procurement Systems and Organizations.

⁵ *Id.*, p.90.

⁶ *Id.*, p. 92.

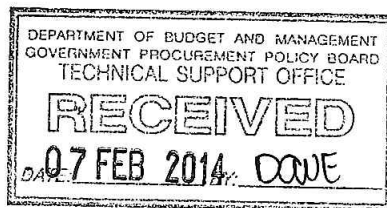
5/23/14



BORJA CONSTRUCTION COORDINATES AND ALLIED SERVICES INCORPORATED

February 6, 2014

ATTY. Dennis S. Santiago
Executive Director V
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road
Ortigas Center, Pasig City



SUBJECT: Relocation/Upgrading of the Airconditioning System of the 6th and 7th Floors of the DOLE Main Bldg.

Dear Atty. Santiago:

We would like to refer to your kind office the bidding conducted last December 3, 2013 by the Department of Labor and Employment. Said bidding was tendered under the guidelines for "Procurement of Goods and Services" and a valid PCAB License and ARC Registration relevant to the project scope was not required by the agency. As a matter of fact, the TOR of the project (see attached Annex 1) repeatedly mentioned words that refers to the project as installation or construction activity as we have pointed out.

We have written the BAC Chairperson on this (see Annex 2) and their corresponding reply (Annex 3). The reply we received confused us because their explanation suggests that "installation" is not a construction activity because the scope of installation works as clearly outlined in Part II(B)(29) of the TOR which mentions that "**CONTRACTOR** shall install all equipment and facilities...". Again, it was explained that the word "construction" should not be construed as a construction activity in its strict sense.

The explanation that the installation is not a construction activity because the TOR mentions that the **CONTRACTOR** shall install.... So the **CONTRACTOR** shall perform the installation but the "installation" is not a construction activity? As a matter of information, all air-conditioning equipment dealers and suppliers engaged in installation works are required by PCAB to secure a relevant license for this scope as mandated by RA 4566.

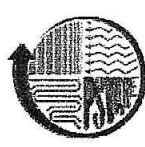
In view of the above confusing reply from the Department Of Labor and Employment we would like to request clarification from your good office on this matter. We also would like to clarify if the award of the project should be withdrawn or rescinded, conduct post qualification on the next bidder or outright declare a failed bidding and again conduct a rebidding which conforms to both RA 9184 and RA 4566.

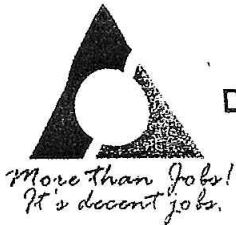
Thank you very much and...

Sincerely yours,

Jerico T. Borja PME

Riza
please prepare OPINION.
The nature of the proc. is determined by the primary purpose of the k. *TT. DS*





Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
 Intramuros, Manila

ANNEX 1

TERMS OF REFERENCE (TOR)

- PROJECT** : RELOCATION/UPGRADING OF THE AIRCONDITIONING SYSTEM OF THE 6TH AND 7TH FLOORS OF THE DOLE MAIN BUILDING
- OWNER** : DEPARTMENT OF LABOR AND EMPLOYMENT
- LOCATION** : 6th and 7th Floors, DOLE MAIN BUILDING, GENERAL LUNA AND MURALLA STREETS, INTRAMUROS, MANILA

I. PURPOSE

The Department of Labor and Employment (DOLE) desires to engage the services of a contractor for the Relocation/Upgrading of the Air conditioning System of the 6th and 7th Floors of the DOLE Main Building.

II. GENERAL CONDITIONS

A. The responsibilities of the CONTRACTOR shall be, as follows:

- Supply, delivery and installation of the following brand new units:

OUTDOOR UNITS

1 unit - ACCU - to be installed at the roof deck, beside elevator machine room with the following specifications;

Item	Description
Power supply	Y1: 3 phase 4-wire system, 380 V, 50 Hz YL: 3 phase 4-wire system, 380 V, 60 Hz TL: 3 Phase - 3 wire system, 220 V, 60 Hz
Cooling Capacity	264,000 Btu/h 77 kw
Heating Capacity	K cal/h - 66,700 300,000 Btu/h 88 kw
Power Consumption	K cal/h - 75,700
Cooling	24.3 kw
Heating	23.0 kw
HP	28

1 unit - ACCU - to be installed at the 7th floor with the following specifications:

Item	Description
Power supply	Y1: 3 phase 4-wire system, 380 V, 50 Hz YL: 3 phase 4-wire system, 380 V, 60 Hz TL: 3 Phase - 3 wire system, 220 V, 60 Hz
Cooling Capacity	309,000 Btu/h 90.5 kw K cal/h - 77,800
Heating Capacity	341,000 Btu/h 100 kw K cal/h - 86,000
Power Consumption	
Cooling	28.4 kw
Heating	25.8 kw
HP	32

1 unit ACCU - to be installed at the roof deck between Bay K and L with the following specifications:

Item	Description
Power supply	Y1: 3 phase 4-wire system, 380 V, 50 Hz YL: 3 phase 4-wire system, 380 V, 60 Hz TL: 3 Phase - 3 wire system, 220 V, 60 Hz
Cooling Capacity	264,000 Btu/h 77 kw K cal/h - 66,700
Heating Capacity	300,000 Btu/h 88 kw K cal/h - 75,700
Power Consumption	
Cooling	24.3 kw
Heating	23.0 kw
HP	28

INDOORS UNITS

16 Indoor Units - Ceiling Suspended Type

Item	Description
Power supply	1Phase, 220-240 V/220 V, 50/60 Hz
Cooling Capacity	39,600 Btu/h 11.6 kw K cal/h - 10,000
Heating Capacity	42,700 Btu/h 12.5 kw K cal/h-10,800
Power Consumption	

Cooling	0.135/0.199 kw
Heating	0.135/0.199 kw
PIP	4

In9 Indoor Units - Ceiling Suspended Type

Item	Description
Power supply	1Phase, 220-240 V/220 V, 50/60 Hz
Cooling Capacity	24,900 Btu/h
	7.3 kw
	K cal/h - 6,300
Heating Capacity	27,300 Btu/h
	8 kw
	K cal/h-6,900
Power Consumption	
Cooling	0.115/0.145 kw
Heating	0.115/0.145 kw
HP	3

ACCESSORIES

25 Units - Operation Remote Controller
 - Model: BRC1C62

IBUT, PAG IBANG
 BRAND, MAG-1113A
 UNG MODEL

16 Units - Refnet Joint
 - Model: KHRP26A22T

9 Units - Refnet Joint
 - Model: BHFP22A33T

3 Units - Outdoor Units Multi Connection Piping Kit
 - Model: BHFP22P100

The model of the air-conditioning units and its accessories shall be based on the approved specifications or its equivalent. The materials for air-conditioning units shall be based on the recommendation of the manufacturer or as per standard basis.

The CONTRACTOR shall carry out all works mentioned above and will be completed within ~~100~~¹²⁰ working days from the date the CONTRACTOR receives the "NOTICE TO PROCEED";

All equipments, materials, works and services required for completion of the relocation/upgrading of Multi-Split Air Conditioner (VRV SYSTEM) shall be included in the Proposal, whether or not they are specifically stated in this Technical Specification.

All works, services, equipment and materials required and associated with the installation and testing of the relocation/upgrading of Multi-Split Air Conditioner (VRV SYSTEM) shall be the Contractor's sole responsibility.

2. Unless otherwise specified in this technical specification, the relocation/upgrading of the air-conditioning system of the 6th and 7th floors of the DOLE Main Building shall comply with the Building Code Standards.
3. Post a performance bond with good and sufficient sureties in the amount equivalent to the following schedule:

Form of Warranty	Minimum Amount in % of Total Contract Price
1. Cash or cashier's/ manager's check, Bank draft/ guarantee or irrevocable letter of credit	Five percent (5%)
2. Surety bond callable on demand issued either by the GSIS or any Surety Insurance Company duly accredited by the Office of the Insurance Commission	Thirty percent (30%)

To guarantee the faithful performance of the Contractor; to answer for the liquidated damages set forth in Section 18; to answer for unpaid cost of labor and materials used in the construction or prosecution of the Contract, as required by Law; to answer for any liability that may be suffered by DOLE resulting from the violation by the CONTRACTOR of the Minimum Wage Law and all other Philippine Laws affecting labor.

Provided further, that all in the event of rescission of this Contract for breach thereof, the bond, at the option of DOLE shall be automatically forfeited in favor of and become immediately payable and collectible by DOLE; otherwise, the bond shall remain and continue in full force and effect until the afore-mentioned obligations as to the faithful completion of the Contract, liquidated damages and cost of labor and materials if any shall have been fully satisfied, charges, settled and paid by the CONTRACTOR.

It is expressly agreed and understood that any change or changes in the drawings, specifications and construction under the contract (whether such changes increase or decrease the amount thereof) or any change in the manner or time of payment made by DOLE to the CONTRACTOR shall in no way annul, release or effect the liability of the surety on the bonds given by the CONTRACTOR.

4. Do all works and furnish all the materials, tools and equipment, and everything necessary or proper for performing and completing the work in accordance with the attached Scope of Work and plans. All the work, labor and materials shall be done and furnished strictly and pursuant to and in conformity with the specifications of DOLE or his duly authorized representative as may be given from time to time during the progress of the work under the terms of the Contract.

Conduct work so as to interfere as little as possible with the private business and public travel. Whenever necessary or required, and at own expense, shall maintain fences, furnish watchman, maintain lights, and take such other precautions as may be necessary to protect life and property.

Assume all responsibilities for the work done, for the protection of the work, and for preventing injuries to persons and damages to property and utilities on or about to work.

5. If the work is interrupted for any reason, it shall be promptly resumed on the removal or cessation of the cause of the delay. The CONTRACTOR shall give written notice to the DOLE at least ten (10) days prior to the beginning, suspending (except in case of accident) or resuming the work, to the end that the DOLE may take the necessary preparations for inspection without delaying the work. All delays or losses resulting from the failure of the CONTRACTOR to give such notice will be at his risk; all extra costs to the DOLE for such delays shall be deducted from the final payment.
6. All defective work, whether the result of poor workmanship, defective materials, damage through carelessness or any other cause, found to exist prior to acceptance of, or final payment for the work shall be removed immediately and replaced by work and materials which shall conform to the specifications, or shall be otherwise remedied in an acceptable manner. This clause shall have full effect regardless of the fact that the work may have been done within the full knowledge of the DOLE's Director of AS, as well as of the DOLE Engineer.
7. The project shall be supervised by a duly Registered Electrical Engineer for Electrical Works, Registered Mechanical Engineer for the (heating, ventilation, and air conditioning) HVAC and Civil Engineer for the Structural Works.
8. The project site shall not be left or abandoned until the project is completed, in operating condition and ready for use by the DOLE.
9. The inspection of the work shall not relieve the CONTRACTOR of any obligation to fulfill his part of the contract as herein prescribed; and defective work shall be made good and unsuitable materials shall be rejected, notwithstanding that such work and materials have been overlooked by DOLE and accepted or estimated for payment.
10. Whenever the Contractor is not at the site; orders may be given by the DOLE Engineer to his authorized representative and shall be accepted and complied with by the superintendent or foreman of the Contractor.
11. The DOLE Engineer or representative, at all times, has access to the work and the Contractor shall provide facilities for such access for inspection. The manner of work and all materials and equipment used therein shall be subject to inspection, tests, and approval of the DOLE's Engineer.
12. Ensure that the project will have constant supervision by a competent superintendent, who shall be present where construction is being carried on at all times during working hours.
13. Nothing in the Contract shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they

have been attached or affixed to the work, but such materials shall upon being attached or affixed, become the property of the DOLE.

14. Upon completion of all work required in the construction of the project, submit a written Request of Acceptance of the Project stated above to the DOLE and the latter shall conduct the required physical inspection and accept the project as satisfactorily completed in accordance with the plans and Scope of Work and in consonance with all pertinent documents forming an integral part of their contract.

15. That in the event that the CONTRACTOR fails to complete the project within the time specified, the CONTRACTOR shall pay DOLE, liquidated damages, in accordance with the revised Implementing Rules and Regulations of the Republic Act No. 9184.

It is understood that the damages herein provided are liquidated damages and that to be entitled to such liquidated damages, DOLE shall not be required to prove that it has incurred actual damages, and that herein, DOLE is hereby authorized to deduct the amount of such liquidated damages from any money due or which may become due to the CONTRACTOR under the or any other contract or from the performance bond filed by the CONTRACTOR, whichever is convenient and expeditious to the DOLE. If however, the CONTRACTOR has delay in the performance or completion of the work by any changes required in the work, or by labor strikes, lockouts, fires, unavoidable casualties, or other causes beyond the control of the Contractor then the time of performance or completion of said work shall be extended for a period equal to the time lost.

16. All employees and/or workers of the CONTRACTOR are not employees and/or workers of the DOLE. Neither is there an employee-employer relationship between the DOLE and the CONTRACTOR.

17. Observe all labor laws, rules and regulations promulgated by the Department of Labor and Employment and relevant government agencies and shall be fully and solely liable for any and all violations of the same.

18. Take all the necessary precautions for the safety of its employees and shall comply with all applicable provisions of the safety laws and Building Code of the Philippines to prevent accidents or injuries to persons in or about or adjacent to the premises where the work are being performed. The CONTRACTOR shall be solely responsible for any liability that may arise therefrom, agreeing and undertaking to hold DOLE free from any claim whatsoever. Should any employee, worker/laborer or other person or entity sue or file any action whether civil or criminal against DOLE on the theory that DOLE is the employer of such employee, worker/laborer or other person or entity, the CONTRACTOR shall actively participate in resisting such claim and/or actions but shall also assist DOLE in defending the Contract as one established between DOLE and the CONTRACTOR the relation of DOLE and independent-contractor and the CONTRACTOR shall hold the DOLE free from liability against any judgment or decision which may be rendered against the CONTRACTOR as the employer of said person/claimant.

Execute the Performance Bond in favor of DOLE to cover claims, demands, payment, suits, action, recoveries and judgments of every nature and description brought or recovered against it, by reasons of any act or omission of said CONTRACTOR, its agents or employees. In execution of the work or as consequence of any negligence or carelessness of the CONTRACTOR, he shall likewise indemnify and save harmless DOLE from and against all losses and all claims, demands, payment, suits, actions, recoveries and judgment of every nature and brought by the CONTRACTOR's creditors, material men, subcontractors or any other claimants or their heirs, administrators and assign by reason of non-payment of compensation or due to injury or death to the CONTRACTOR's laborers, employees, agents, representatives, sub-contractors, etc. and/or by reason of non-payment of any indebtedness or obligations if contracted in connection with the said Contract;

19. Guarantee the finished work from all defects in workmanship and upon completion of the CONTRACT deliver complete, undamaged and in accordance with what had been agreed upon, subject to inspection of the DOLE Technical Property Inspection Committee (TPIC) and approval of DOLE. The project subject of the CONTRACT shall be deemed completed upon certification to that effect and final acceptance by the DOLE. The CONTRACTOR shall post a warranty security in accordance with the following schedule to answer for any defect that may arise out of the said project within the period of one (1) year from the date of its completion:

Form of Warranty	Minimum Amount in % of Total Contract Price
1. Cash or letter of credit	Five percent (5%)
2. Bank guarantee	Ten percent (10%)
3. Surety bond callable upon demand	Thirty percent (30%)

20. The Contractor shall repair, replace or make good at his own expense any defect or faults appearing in the Contractor's work or material supplied by the Contractor within twelve (12) months after acceptance.
21. All required permits shall be for the account of the CONTRACTOR. All necessary documents in acquiring all kinds of permits in all the stages: of dismantling, pre-installation and acceptance of the DOLE shall be prepared, processed and paid for by the Contractor.
22. CONTRACTOR shall ensure compliance to DOLE Department Order No. 13, Series of 1998 on the guidelines governing occupational safety and health in the construction industry by requiring submission of a Construction Safety and Health Program after the receipt of a Notice of Award from DOLE and assignment of a Safety Personnel who is a holder of a Certificate of Completion on the Basic Occupational Safety and Health for Construction Site. Said Certificate of the Safety Personnel shall be submitted to DOLE after receipt of a letter from DOLE requiring submission of the same.

B. The responsibilities of the DOLE shall be as follows:

23. Upon issuance of the Notice to Proceed to the CONTRACTOR, an advance payment or mobilization fee of fifteen percent (15%) shall be paid by DOLE to the CONTRACTOR, subject to the submission of an irrevocable letter of credit or equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission.
24. DOLE shall pay the total amount of P7,048,214.50 based on the following:
- a. Advance payment of fifteen percent (15%) of the total contract price, subject to the submission of an irrevocable letter of credit or equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission;
 - b. Progress payment shall also be made by DOLE based on the following percentage of accomplishment/completion:
 - Thirty Percent (30%) accomplishment
 - Fifty Percent (50%) accomplishment
 - Seventy Five Percent (75%) accomplishment
 - c. The DOLE shall deduct the following from gross amounts to be paid to the CONTRACTOR on progress payment:
 - Cumulative value of the work previously certified and paid for.
 - Portion of the advance payment to be recouped for the month
 - Retention money in accordance with the condition of the contract
25. DOLE shall deduct the following from gross amounts to be paid to the CONTRACTOR on progress payment:
- Cumulative value of the work previously certified and paid for.
 - Portion of the advance payment to be recouped for the month.
 - Retention money in accordance with the condition of the contract
26. DOLE may require alterations in the line, grade, plan, form, dimension or materials of work or any parts thereof, either before or after the commencement of the construction. Such alterations shall be ordered by DOLE in writing and no alterations from the drawings and specifications shall be considered to have been authorized without written instruction from DOLE. If such alterations increase or diminish the quantity of work to be done, adjustment of such increase or decrease shall be made.
- C. The project consists of the following items for the relocation / upgrading of Multi-Split Air Conditioner (VRV SYSTEM) at the 6th and 7th

floors of the DOLE Main Building associated with the Outdoor Units, Indoor Units, Accessories and Power Supply System, etc.:

- Engineering Design
- Procurement
- Installation
- Inspection and Test
- Acceptance
- Users Training
- Documentation

27. ENGINEERING DESIGN

The CONTRACTOR shall provide engineering work to implement this project. Such services shall include, but not limited to the following:

- Preparation of the mechanical system, floor/ and electrical layout.
- The design to be prepared should be compatible with the operation of the supplied electrical loads.
- Configuration of the suitable power systems which shall be connected with the existing electrical loads.
- Submission of an updated and as-built site data at the end of acceptance procedures.

The CONTRACTOR shall, at his own cost and responsibility, carry out the necessary site survey for the confirmation/verification of interface conditions and buildings to which the Multi-Split Air Conditioner (VRV SYSTEM) shall be installed or accommodated in, within one (1) week duration by using the appropriate number of personnel for the detailed engineering of the required system.

The CONTRACTOR shall perform the detailed engineering works in accordance to this technical specification, drawings and Contractor's site survey. However, the Contractor shall follow the manner of such work that is described in **Approved Plans and Specification**.

28. PROCUREMENT

The CONTRACTOR shall have full responsibilities for the procurement of the whole project. Material and Equipment to be requisitioned shall be subjected to the approval of the DOLE Engineer on Contractor's Materials/Equipment Specifications.

The CONTRACTOR shall be totally responsible for the following procurement activities to ensure the implementation of the project within the scheduled time frame and guarantee the good quality of materials and equipment to be supplied, delivered and installed:

- a) Review and issue the relevant material specifications for procurement of materials and equipment subject to the approval of the DOLE Engineer.
- b) Expedite the timely delivery of equipment and materials.
- c) Arrange factory inspection & testing.

- d) Ensure that complete and correct information on Vendor's specifications and the necessary spare parts shall be recommended.

The CONTRACTOR shall, at his own cost and responsibility, provide and supply the following equipment/facilities for establishing the Multi-Split Air Conditioner (VRV SYSTEM) as shown in the attached Approved Plans and Specifications.

- ACCU Outdoor Units
- Indoor Units Ceiling Suspended Type
- Accessories
- Power Supply System
- Miscellaneous
- Materials for Installation

The technical specifications and requirements of Multi-Split Air Conditioner (VRV SYSTEM) shall be described in the **Approved Plans and Specifications**.

The CONTRACTOR shall be required to perform tests at the manufacturer's factory to ensure that the equipment is complete in all respects of the technical requirements and complies with the terms of the Contract.

- a) The CONTRACTOR shall be responsible for correcting any damage which occurs during the procurement of the equipment/facilities and materials.
- b) The CONTRACTOR shall arrange, at his own expense, covered storage and protection of all equipment/facilities and materials against corrosion and mechanical damage during storage and installation at the site.

29. INSTALLATION

The CONTRACTOR shall install all equipment and facilities designed to satisfy the technical requirements for the Relocation/Upgrading of the air-conditioning system of the 6th and 7th floors of the DOLE Main Building.

The CONTRACTOR shall be entirely responsible for solving any and all technical problems with regards to inter-working between the equipment to be provided.

- a) Cleaning

Upon completion of the installation, the contractor shall remove from the site, as early as possible, all tools, appliances and plants not constituting part of the contract.

- b) Repair of Damage

The CONTRACTOR shall be liable at his own expense, all damages to building, plants, furniture's, etc., caused by the CONTRACTOR during the installation period of the contract.

BORJA CONSTRUCTION COORDINATES AND ALLIED SERVICES INCORPORATED

January 21, 2014

MA. GLORIA A. TANGO
Assistant Secretary and
Chairperson, DOLE Central BAC

THRU: **Raul T. Ballad**
Supply officer III
DOLE Bldg., Muralla St.,
Intramuros, Manila 1002

SUBJECT: **Relocation/Upgrading of the Airconditioning System of the 6th and 7th Floors of the DOLE Main Bldng.**

Dear Assec. Tango:

We are writing in relation to the award of the above subject project to Thermozone Philippines Corporation. We would like to respectfully inform your good office that the above named contractor lacks the PCAB Specialty License specifically on Mechanical Works – Air-conditioning Works as indicated in the PCAB list of Contractors and as such not qualified to undertake the kind and type of project as provided for by **RA 4566 otherwise known as the Contractors' License Law.**

Under your Terms of Reference, where the **CONTRACTOR** is repeatedly mentioned; "II. General Conditions A. 1. Supply, delivery and installation of....," the installation is a construction activity and therefore requires a Contractor's License and where the equipment to be installed is a mechanical equipment therefore requires a Specialty License for Mechanical Works – Airconditioning Works. Further, item B #26 of the General Conditions of Contract states; "DOLE may require alterations in the line, grade, plan, form....either before or after the commencement of the construction", referring to the project as a construction activity again dictating that a valid Contractor's License with the classification under Air-conditioning Works is required under RA 4566 and RA 9184.

We hope that the award of the project be reconsidered and re-evaluated taking into consideration provisions of RA 4566. We shall furnish a copy of this letter to PCAB and to GPPB to also seek clarifications on this issue.

Thank you very much and...

Sincerely yours,


Jerico T. Borja, PME

RECEIVED

OFFICE OF THE ASSISTANT SECRETARY
STANDARDS, SOCIAL PROTECTION AND
Department of Labor and Employment

NAME CARM PABUSTAN
DATE 1/21/14
TRACKING NO. _____
TIME 2:11 pm

LIST OF PCAB LICENSED CONTRACTORS FOR CPY 2013-2014 as of 16-December-2013

#	License No.	Company Name	Principal Classification	Other Classification/s	Category	Authorized Managing Officer	Address	Contact Nos.	E-mail Address	From	Until
5463	34590	THEARIS BUILDERS & SUPPLY	General Engineering	General Building	D	Noel Damalerio Digo	Freshville Subdivision, Alegria, San Francisco, Agusan del Sur	085-3438037	thearis_builders@yahoo.com.ph	July 01, 2013	June 30, 2016
5464	17671	THEL CONSTRUCTION & SUPPLIES	General Building	General Engineering	B	Thelmo B. Bulquerin	114 Purok Maya, Poblacion 7, Midsayap, North Cotabato	0909-592 67 68	thel_construction2000@yahoo.com	October 09, 2013	June 30, 2016
5465	36796	THERMAL-AIRE SYSTEM TECHNOLOGIES, INC.	Trade	none	Trade	Denris Rivera Miguel	22A Marcos Alvarez Avenue, Moonwalk Village, Talon, Las Piñas	02-497-4562/02-519-2304	thermal_aire@yahoo.com		
5466	21549	THERMATECH INCORPORATED	Air-conditioning and Refrigeration Work	Mechanical Work	B	Federico E. Galiste	2624A A. Bonifacio St. Bangkal, Makati City	239-3826/238/0113	thermatech94@yahoo.com		
5467	35964	THERMOMETRIC INDUSTRIES, INC.	Electrical Work	General Building, Mechanical Work, Air-conditioning and Refrigeration Work	D	Crispulo Sanchez Velasquez, Jr.	Block 4, Lot 13, Bernardo Square, Annex 29, Better Living Subdivision Paranaque CPO, Paranaque	7763498/7760277	thermometric_engrs@yahoo.com		
5468	33072	THERMOZONE PHILIPPINES CORPORATION (Formerly: Thermobreak Philippines Corporation)	General Building	General Engineering	D	Allan Garcia Zapanta	2280 Marcon Street, Brgy. San Isidro Makati CPO (inc. Buendia up to Edsal), Makati	8870803/8870813	info@thermozone.ph	January 31, 2011	January 31, 2014
5469	8177	THOM-ARMAN CONSTRUCTION	General Engineering	General Building	B	Arnelia E. Yu	National Highway, Mindog, Manggcol, Ojamis City, Misamis Occidental	(088) 5211354 / 088-521-5342	thomarmarman_construct@yahoo.com	November 25, 2011	November 25, 2014
5470	35650	THREE I BUILDERS	General Building	General Engineering	C	Nemita Maristanez Vajje	43 Cahio Real Street, Las Villas de Manila, San Francisco Bifan, Laguna	4780064	sisa_vajera@yahoo.com.ph	January 04, 2012	January 04, 2015
5471	35735	THREE RE ELEVEN CONSTRUCTION	General Building	General Engineering	D	Reynaldo Resurreccion Fragante, Sr.	Green R Hotel Building, Alcantara Street, Vigan, Ilocos Sur	6521149	reynaldofragante@yahoo.com/ouifragant@gmail.com	January 26, 2012	January 26, 2015
5472	10722	THREE W BUILDERS, INC.	General Building	General Engineering	AAA	Victoriano L. Ada	12 B5, Bolon Gutierrez, BF Homes, Las Piñas CPO, Las Piñas	873-7304	threewbuilders@yahoo.com	September 28, 2012	June 30, 2015
5473	14695	THREE-IN-ONE CONSTRUCTION & TRADING	General Building	General Engineering	B	Jerry D. Tulliao	Richtown 1 Subd., San Fernando, Pampanga	(045) 4553309	jerry_tulliao@yahoo.com	September 30, 2011	September 30, 2014
5474	17247	THUNDER CONSTRUCTION	General Engineering	General Building	B	Alexander B. Barona	Poblacion, Lapid, Abra	(074) 752-8128	thunderconst@yahoo.com	October 03, 2012	June 30, 2015

*Validity of Registration for Gov't Infrastructure Projects

GB: DTICAPP/CABM/MI

TERMS AND CONDITIONS OF LICENSE

1. The Licensee must observe and abide by the provisions of Republic Act No. 4566 as amended by Presidential Decree No. 1746, its implementing rules and Regulations, and other orders or instructions which the Philippine Contractors Accreditation Board shall issue from time to time pursuant to its power and authority under the Law.
2. The License shall be valid during the contracting fiscal year it was issued provided it has not been suspended, cancelled, or revoked by the Board.
3. The License must be renewed annually on or before the expiration of its validity; otherwise, the contractor shall be deemed to be operating without valid license.
4. The License is non-transferable.
5. The Licensee must not submit bids, sign construction contracts nor undertake construction projects after the license has already expired and before the same is renewed otherwise the contractor shall be liable to appropriate disciplinary action and payment of additional licensing fee in accordance with existing schedule.
6. The Licensee's qualification is subject to review at any time to ascertain the contractor's eligibility to the present classification and category of his license.
7. License category may be upgraded and other classification(s) may be added to the license only upon formal application by the Licensee together with all the necessary supporting documents.
8. The Licensee must not undertake/implement construction projects which are not within the scope of the license's classification otherwise he shall be liable to appropriate disciplinary action and payment of additional licensing fee in accordance with the existing schedule.
9. The Licensee must immediately notify the Board in writing of the resignation or disassociation of its Sustaining Technical Employee and must replace the said employee within a period of ninety (90) days from the date of resignation or disassociation. Failure to notify the Board within 30 days from the date of resignation of the Sustaining Technical Employee is a ground for immediate revision of the category and classification(s) of the License.
10. Submission of falsified documents or any misrepresentation or false information in the application for a license or renewal thereof shall subject the Licensee to administrative disciplinary action without prejudice to the imposition of penal sanctions provided for by Law.
11. The Licensee must submit to the Board monitoring reports that may be required from time to time.
12. A Licensee who is retiring from the construction business must advise the Board in writing and must immediately surrender the license to the Board for cancellation.
13. The Licensee must at all times observe and adhere to the letter and spirit of the code of ethics of constructors.
14. The License is valid only when signed by the individual proprietor or the authorized managing officer of the Licensee.
15. The Licensee must employ only licensed subcontractors and/or specialty contractors.
16. The Licensee shall only procure sub-contract from a licensed contractor.
17. The Licensee shall only procure sub-contract from a licensed project owner undertaking by himself, a project for commercial / industrial use.

FILIPINO CONSTRUCTORS' CODE OF ETHICS

1. A constructor should be fair and honest in his business dealing, his practices and activities guided by principles of justice and equity.
2. A constructor should conduct himself with honor and dignity in his relations with his fellow constructors, fully aware that to speak maliciously of the work reputation or ability of a fellow constructor is highly unethical, and should cooperate with them for the protection and advancement of the construction industry.
3. A constructor should carry his construction contracting on high ethical level and deliver quality service and faithful performance of the undertaking to which owner-clients are entitled.
4. A constructor should not advertise his firm's business in misleading terms and false representations which is not only improper but also immoral.
5. A constructor should refrain from unfair competition which is a disservice to the construction industry.
6. A constructor should be fair and just to his employees, considering their welfare with sympathy and understanding
7. A constructor should not attempt to supplant a fellow constructor who is in the employ of the owner or to prevent a



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Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

30 January 2014

JERICO T. BORJA, PME

Borja Construction Coordinates and
Allied Services Incorporated
467 Sitio 2, Barangay Patimbo,
Sta. Cruz, Laguna

Dear Mr. Borja:

This refers to your letter dated 21 January 2014, herein treated Motion for Reconsideration from the DOLE Central Bids and Awards Committee's Resolution No. 37, Series of 2013 declaring Thermozone Philippines Corporation as the lowest calculated responsive bidder in the project **Relocation and Upgrading of the Airconditioning System of the 6th and 7th Floors of the DOLE Main Building.**

In your letter, you contended that Thermozone Philippines Corporation lacks the Philippine Contractors Accreditation Board (PCAB) specialty license for mechanical works (airconditioning works) as indicated in your attached List of PCAB Licensed Contractors for CFY 2013-2014 as of 16 December 2013. Hence, you argued that pursuant to Republic Act No. 4566 Thermozone Philippines Corporation is not qualified to undertake the kind and type of project similar to the aforementioned project.

The motion is bereft of merit.

It must be emphasized that the project is classified as procurement of goods as it is mainly delivery of airconditioning units and its accessories. For this reason, the requirement of PCAB license was never discussed in the pre-bid conference as the DOLE, from the start, conceived the project as procurement of goods.

Your argument that 'installation,' as mentioned under Part II(A)(1) of the project's Terms of Reference (TOR), is a construction activity cannot hold water. The scope of installation works is clearly outlined in Part II(B)(29) of the TOR which mentions that "the contractor shall install all equipment and facilities..." Moreover, the mention of the word 'construction' in Part II(B)(26) of the TOR should not be construed to mean construction activity in its strict sense. To reiterate, the project is mainly procurement of goods and the installation of the airconditioning units is just an incident to the said

procurement of goods. Hence, the project's TOR did not require the presentation of license from PCAB.


It is worth mentioning that Section 23.1(a)(iv) of the Revised Implementing Rules and Regulations of Republic Act No. 9184 requires the presentation of a valid PCAB license "in the case of procurement of infrastructure projects..." Further, the requirement of PCAB license is expressly stipulated only under Section 23.5.2.3 of the same Rules, which is part of the eligibility criteria for the procurement of infrastructure projects. Furthermore, the submission of a valid PCAB license, under Section 27.1.4(a)(ii) of the same Rules as a precondition for the award of the contract, applies only for the procurement of infrastructure projects.

Thus, from the foregoing provision, it is settled that the requirement of PCAB license applies only for the procurement of infrastructure projects.

Nevertheless, we thank you for participating in the public bidding for the aforementioned project.

Thank you.

Very truly yours,


MA. GLORIA A. TANGO
Assistant Secretary and
Chairperson, DOLE Central Bids and Awards Committee