

NPM No. 05-2013

16 January 2013

MR. EDUARDO RAMON T. DIMAANO*President***PHILIPPINE INSTITUTE OF CIVIL ENGINEERS (PICE)****-ZAMBOANGA CITY CHAPTER**

Zamboanga City

Re: Scope of Observers' Participation in the Procurement Process

Dear Mr. Dimaano:

We respond to your letter, dated 2 January 2013, seeking our opinion on the proper interpretation of Section 13¹ (Observers) of Republic Act (RA) No. 9184, specifically on whether or not the Bids and Awards Committee (BAC) is required to invite Observers during the post-qualification² stage of the procurement process.

It is represented that Ms. Cholie M. Roble, Chairperson of the BAC-Department of Public Works and Highways – Region IX (BAC-DPWH-Region IX), through a letter dated 21 December 2012, stated that the BAC is not required to invite Observers during post-qualification since Section 2, Step 7, page 58 of the Generic Procurement Manual (GPM), Volume I,³ issued by the Government Procurement Policy Board states that the parties ought to be in the conduct of post-qualification are limited only to the members of the BAC, Technical Working Group (TWG), and BAC Secretariat, and to some extent, the Contractor with the Lowest Calculated Bid (LCB) in the event further clarification, verification and validation is necessary to ascertain compliance with the legal, technical, and financial requirements of the project. It is in this context that you are seeking our opinion on whether the presence of Observers may be limited to the Opening of Bids by the BAC.

Section 13 of RA 9184 expressly states that the BAC shall in “all stages of the procurement process”, invite Observers to sit in the proceedings. This provision is further strengthened by the provision that “[t]he BAC is required to invite Observers who may attend and observe all stages of the procurement, especially: i. the pre-bid conference; ii. opening of bids; iii. bid evaluation; iv. Post-qualification; v. contract award; and vi. special meetings of

¹Observers – To enhance the transparency of the process, the BAC shall in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR. (Underscore ours)

²Article X of RA 9184.

³GPM Volume I, on *Guidelines on the Establishment of Procurement Systems and Organization*, June 2006, issued by the GPPB, is NOT the applicable volume of the GPM. The correct citation should refer to GPM, Volume III, *Manual of Procedure for the Procurement of Infrastructure Projects*.

the BAC.⁴ Moreover, the procurement process, contemplated under Section 13 of the law and its associated rules refer to “competitive bidding”, and by definition, competitive bidding “[r]efers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.”⁵

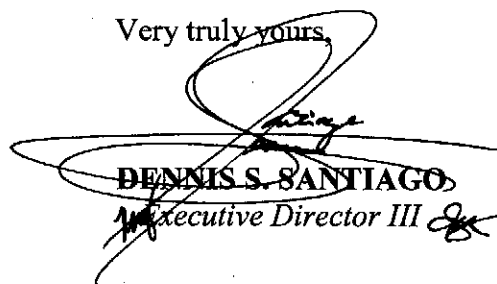
It is clear that the phrase “all stages of the procurement” shall include all the procurement stages above mentioned. Thus, the BAC is mandated to invite Observers in all stages of the procurement process, including the post-qualification stage, and could not validly limit their invitation and attendance only to the Opening of Bids. The attendance of Observers in all stages of the procurement process is aimed at enhancing transparency, which is one of the governing principles of government procurement espoused by RA 9184. To confine the invitation of observers only to the Opening of Bids would limit transparency in the procurement process.

Additionally, GPM, Volume III, on post-qualification,⁶ enumerates the parties who are to conduct post-qualification. Indeed, post-qualification is only conducted by the BAC, TWG, and BAC Secretariat. Although Observers do not conduct the post-qualification of the bidder with the Lowest Calculated Bid, they are not precluded from being invited and be present in the meeting, and their role during said stage is far from being merely ministerial and not limited to being mere passive witnesses to the proceedings.

Observers sign as witnesses in the Post-qualification Summary Report if, in their independent observation, the BAC followed the procedure described in the IRR of RA 9184 and the Manual, and that they are amenable to the results of the post-qualification. However, if the Observer finds the post-qualification procedures irregular or the Report does not match the actual findings, he shall so state in writing through the submission of an Observer’s Report addressed to the BAC Chairman, and the same shall be attached to the Post-qualification Summary Report submitted to the approving authority.

We hope that our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular situations presented, and may not be applicable given a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director III

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⁴GPM, Volume III, *Manual of Procedure for the Procurement of Infrastructure Projects*, 5. Observers, p. 19.

⁵Section 5(h), Implementing Rules and Regulations of RA 9184.

⁶See: p.58 of 113.