



## TECHNICAL SUPPORT OFFICE

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Pasig City, Philippines 1605

**NPM No. 003-2007**

28 February 2007

**MS. NANCY E. SANTOS**  
*Head, BAC Secretariat*  
**SOCIAL SECURITY SYSTEM**  
East Avenue, Diliman, Quezon City

**Re : Prospective Application of Memorandum Order No. 213**

Dear Ms. Santos:

We respond to your letter dated 2 October 2006 seeking clarification on the application of Memorandum Order No. 213 (M.O. 213) dated 08 May 2006 which amended Section 54.2 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184).

Prior to its amendment, Section 54.2 (b) of the IRR-A of R.A. 9184 mandates the procuring entity to draw up a list of at least three invitees for goods and infrastructure projects only. Said requirement does not apply to consulting services. It reads:

For items (a) and (b) of Section 53, **in the case of goods and infrastructure projects**, the procuring entity shall draw up a list of at least three (3) **suppliers or contractors** which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed. (Emphasis Supplied)

Sec. 54.2 (b) was then amended by M.O. 213. One of the amendments is the application of three-invitees rule to consulting services. Sec. 54.2 (b) of the IRR-A of R.A. 9184, as amended, now reads:

For item (a) of Section 53, the procuring entity shall draw up a list of at least three (3) **suppliers, contractors, or consultants** in good standing which will be invited to submit bids and negotiate with the bidder who submitted the lowest calculated bid or highest rated bid, whichever is applicable. If the offer of the bidder who submitted the lowest calculated

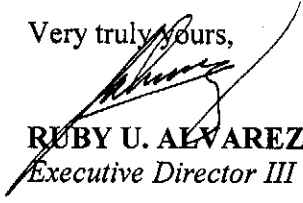
bid or highest rated bid, whichever is applicable, is not responsive to the original specifications and ABC, negotiation shall be made in ascending order starting from the lowest offer. The bidder whose bid is found to be responsive to the original specifications and ABC shall be considered for award. In all cases, the award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity. (Emphasis Supplied)

We understand that after two failed biddings, Social Security System (SSS) invited one consultant and entered into negotiated procurement with said consultant pursuant to Bids and Awards Committee Resolution dated 6 April 2006, or prior to the effectivity of M.O. 213. M.O. 213 was published in the Manila Times on 12 May 2006 and became effective fifteen (15) days after its publication or on 27 May 2006.

As a general rule, statutes are to be construed as having prospective application. Considering that the contract was entered into prior to 27 May 2006 or the effectivity of M.O. 213, SSS is not legally required to draw up a list of three (3) consultants to invite prior to negotiations.

We hope to have clarified the matter.

Very truly yours,

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