

NPM No. 06-2011

7 March 2011

MS. NANCY E. SANTOS
BAC Secretariat
SOCIAL SECURITY SYSTEM (SSS)
East Avenue, Diliman, Quezon City

Re : Habitual Withdrawal of Bids

Dear Ms. Santos:

We refer to your letter dated 1 October 2010, which we received on 4 October 2010, requesting for opinion regarding the following matters:

1. Whether the following acts are considered acts of habitual withdrawal:
 - a) Secured BTB, but did not submit bid nor letter of non-participation;
 - b) Secured BTB, but only submitted letter of non-participation;
 - c) Submitted bid higher than the Approved Budget for the Contract (ABC); and
2. Whether the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants is still applicable in view of the revised Implementing Rules and Regulations (IRR).

As you have correctly observed, habitually withdrawing from bidding for at least three times within a year is considered a prohibited act under Section 69 of the IRR of Republic Act (RA) 9184. In order to determine whether an act may be considered habitual withdrawal, we need to define what constitutes withdrawal and what makes it habitual.

Section 26.2 of the IRR of RA 9184 provides that bidders may withdraw their bids prior to the deadline for the receipt of bids by submitting a letter expressing their intention to no longer participate in the bidding. From this, we can infer that the act of withdrawal consists of the acts of submitting a bid and retracting the same. As provided in Section 69.2 of the same IRR, withdrawal becomes habitual when repeatedly done three times within a year.

In this regard, a bidder who purchases bidding documents, but does not submit a bid or a letter of non-participation, cannot be considered to have withdrawn inasmuch as it has not submitted a bid, and therefore, cannot withdraw any. A bidder who secures bidding documents, but submits a letter of non-participation, cannot be considered to have withdrawn since it still did not submit a bid. Lastly, a bidder who submits a bid higher than the ABC

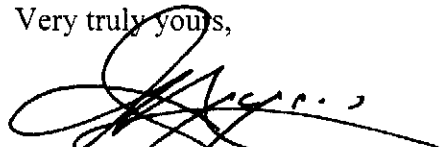
cannot be deemed to have withdrawn since it actually submitted its bid and participated in the bidding process.

Hence, we are of the view that the foregoing acts may not be considered acts of habitual withdrawal because they are, in the first place, not acts of withdrawal of bid. This notwithstanding, such acts when coupled with malice and intent to cause a false sense of competition and done repeatedly, thereby denying the public a fair price, may nevertheless be regarded as other acts that tend to defeat the purpose of competitive bidding.

With regard to your second concern, please be informed that the Uniform Guidelines for Blacklisting of Manufacturers, Suppliers, Distributors, Contractors and Consultants still remains applicable for the suspension or blacklisting of erring suppliers, constructors, and consultants.

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

Very truly yours,



DENNIS LORNE S. NACARIO
OIC - Executive Director III