

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

**NPM No. 75-2013**

8 August 2013

**MS. CORAZON C. BERNIDO, PH.D.**  
*Deputy Director*  
*Chairperson, Bids and Awards Committee*  
**PHILIPPINE NUCLEAR RESEARCH INSTITUTE (PNRI)**  
Commonwealth Avenue, Diliman, Quezon City

**Re : Authority of the Bidder's Legal Representative**

Dear Deputy Director Bernido:

We respond to your letter seeking our opinion on whether PNRI could revoke an awarded contract prior to its implementation due to a question on the authority of the representative to submit bid and represent the would be bidder company.

As can be gleaned from your request, WILPER Construction, Inc. (WILPER), represented by its President/General Manager, Ms. Maria Teresa L. Castor, was awarded two contracts for infrastructure projects by PNRI. The first project is 90% completed, and the corresponding payment thereto has been released to WILPER. As for the second project, PNRI has issued the Notice of Award (NOA) to WILPER on 28 December 2012, but the work thereto has not commenced since the authority of Ms. Castor to represent WILPER was questioned through a letter dated 8 January 2013, which PNRI received from one of the Directors of WILPER, Mr. Jose Ma. L. Castor, stating that "any bidding of projects represented by Ma. Teresa Castor or any other person without consent of the board was illegal." It is in this context that guidance on the following issues is being requested:

1. Whether PNRI should proceed with the implementation of the contract for the second project since Ms. Castor appears to have an authority to transact business for and in behalf of WILPER based on the documents submitted together with the bid; and
2. Whether PNRI should revoke the contract award in favor of WILPER due to the alleged intra-corporate dispute and award the same to the next lowest bidder.

Under Article 1317 of the Civil Code of the Philippines (Civil Code), a contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. Under the law on contracts, both the offer and the acceptance must be

*AK*

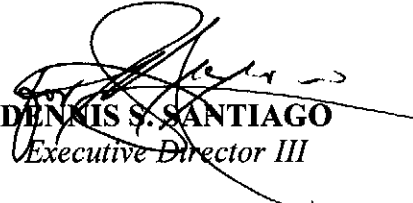
voluntary and willful. In that, if an offer, such as in the case of a bid, submitted by an agent, was made without the consent of the principal, there is in fact and in law no offer to speak about. As such, there is nothing to accept, either through plain acceptance or through a NOA in the case of public bidding, or there is no "offer" in the first place.

Considering the effect and legal repercussions that the allegations of Mr. Castor would bring to the contract award, it will not be prudent to simply rely neither on the allegations of Mr. Castor nor on the representations of Ms. Castor as regards the latter's authority to act for and in behalf of WILPER. It is thus imperative for PNRI to inquire with WILPER whether Ms. Castor has been duly authorized by its Board of Directors to represent the corporation in PNRI's procurement activity. If such validation reveals a negative result, PNRI may disqualify WILPER not only on the ground of misrepresentation, but also on the fact that WILPER did not make any offer or submit any bid, for which PNRI may revoke the NOA, as there is nothing to accept in the first place, and proceed to post-qualify the next lowest bidder.

In sum, during post-qualification stage, the PNRI should verify, validate, and ascertain with WILPER, as the corporate principal, whether Ms. Castor is duly authorized to act as its agent and represent it in the procurement activity of PNRI. Should it be established that Ms. Castor has no authority to represent WILPER, PNRI may disqualify WILPER and revoke the NOA. On the other hand, if it has been determined that Ms. Castor has no authority to represent, but the conditions for award have already been fulfilled, PNRI should terminate the contract for unlawful act following the procedures under the Guidelines on Termination of Contracts<sup>1</sup>. Conversely, if Ms. Castor has the authority from the Board, the contract award and execution can proceed.

We hope 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 other concerns, please do not hesitate to contact us.

Very truly yours,

  
**DENNIS S. SANTIAGO**  
*Executive Director III*

---

<sup>1</sup> Issued by the GPPB through GPPB Resolution 18-2004 dated 22 December 2004.