

**NPM No. 08-2006**

April 06, 2006

**MR. GEORGE H. BIAN**

Cebu Rose Motors

Unit 16AB Lafayette 2, Eastwood City Walk

Bagumbayan, Libis, Quezon City

Dear Mr. Bian:

This refers to your letter, dated 25 October 2005, addressed to the Davao Regional Director of the Commission on Audit requesting clarification on the following:

1. Whether your foreign supplier's bank certificate issued by a foreign country may be used for purposes of complying with the requirement for a commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid; and
2. Whether your company may submit bids for two (2) different foreign suppliers.

The aforesaid letter was endorsed by the Local Government Sector of the Commission on Audit in recognition of our authority to act on procurement related issues or questions such as those raised in your letter.

#### **Requirement for a Commitment from a Licensed Bank**

We wish to clarify at the outset that distributors, sole or otherwise, are considered separate and distinct from its suppliers. Their compliance with the legal, technical, and financial requirements is evaluated based on their own qualifications, and not founded on the qualifications of their suppliers. Thus, unless they are participating as a Joint Venture entity, no document or qualification of one entity will be considered in favor of the other.

We highlight Item 7, Section 25.3 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act 9184 (R.A. 9184), which requires as part of the Technical Documents a "commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid." Undeniably couched in very clear and unambiguous language, a simple construction would immediately reveal the application

of this provision. Concomitantly, for purposes of compliance, the commitment by a licensed bank should have been issued in favor of the bidder and not its supplier.

As represented in your letter, the bank certificate you intend to use was secured by and issued for your foreign supplier. Applying the earlier discussion on the evaluation of distributors, we arrive at the conclusion that the bank certificate obtained by your foreign supplier cannot be considered in your favor for compliance with the requirement under Item 7, Section 25.3 of the IRR-A.

### **Submission for Two Suppliers**

One of the governing principles on Government Procurement enunciated in R.A. 9184 is competitiveness.<sup>1</sup> The competition contemplated herein is actual, inherent and is not feigned or superficial. For this reason, the IRR-A under Section 65.2(4) thereof prohibits a bidder, by himself or in connivance with others, from employing schemes which tend to restrain the competitive rivalry of the parties or operates to stifle or suppress competition and thus result to a disadvantage to the public.

A scheme which tends to restrain the natural rivalry of parties is best exemplified exactly by, the situation being raised for clarification – when one entity submits two (2) separate bids, on its own or for another's instance. Thus, despite the fact that your company is the sole distributor for two (2) different suppliers, you cannot submit two (2) separate bids in a procurement activity, representing both your supplier, or one (1) of them or representing and allowing another entity to bid for your other supplier to secure to yourselves a sure win or award.

In addition, although under different justification from the foregoing, submission of alternative bid offers is also prohibited such that a bidder who performs such act will be automatically from participating in that particular procurement activity.

We trust that this clarifies matters.

Very truly yours,

  
~~ESTANISLAO C. GRANADOS JR.~~  
Executive Director IV

### **Copy furnished:**

**HON. AMORSONIA B. ESCARDA**  
Assistant Commissioner  
Local Government Sector  
Commission on Audit  
Commonwealth Avenue, Quezon City

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<sup>1</sup> Section 3(b), R.A. 9184.