

NPM No. 08-2008

1 July 2008

Mr. ABEL SUMABAT
BAC Secretary
CITY GOVERNMENT OF MUNTINLUPA
National Road, Putatan, Muntinlupa City

Re : Advance Payment

Dear Mr. Sumabat:

We respond to your letter dated 12 June 2008 requesting for this office's concurrence on the proposed application of Item 4.3 of Annex D of the Implementing Rules and Regulations Part A of Republic Act No. 9184 or the "Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials" (hereafter, the "Guidelines"). Item 4.3 reads:

A single advance payment not to exceed fifty percent (50%) of the contract amount shall be allowed for contracts entered into by a procuring entity for the following services where requirement of down payment is a standard industry practice:

1. Hotel and restaurant services;
2. Use of conference/seminar and exhibit areas; and
3. Lease of office space.

We understand that the City Government of Muntinlupa agreed to the release of fifty percent (50%) down payment on the purchase of fire fighting equipment based on the representation of the supplier that said initial payment is a common practice in said industry.

We regret to inform you that this office cannot support this interpretation. A careful reading of Item 4.3 reveals that the phrase "services where requirement of down payment is a standard industry practice" merely describes the three (3) enumerated services, namely: (i) hotel and restaurant services, (ii) use of conference/seminar and exhibit areas, and (iii) lease of office space, where advance payment not to exceed fifty percent (50%) is allowed. It is not a catch-all phrase which permits a procuring entity to add another instance.

It also bears stressing that the prohibition on advance payment is based on Section 88 of Presidential Decree 1445 or the Government Auditing Code of the Philippines which expressly prohibits the release of government funds for supplies and materials not yet delivered. The relevant portion of Section 88 reads:

Sec. 88. Prohibition against advance payment on government contracts. –

(1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

x x x

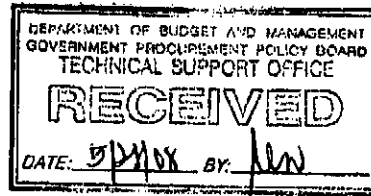
We hope to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,



RUBY U. ALVAREZ
Executive Director III

28-MAY-2008 13:04



P. 01



Republic of the Philippines
CITY GOVERNMENT OF MUNTINLUPA
National Road, Putatan, Muntinlupa City

BIDS and AWARDS COMMITTEE

May 28, 2008

Atty. RUBY U. ALVAREZ
Executive Director, TSO
Government Procurement Policy Board
Pasig City

Dear Ms. Alvarez:

In a letter dated May 21, 2008, this office requested for your concurrence with respect to its reading of the IRR in relation to posting the IALB to the LGU's website, if available.

Convinced on the merits of the reasons given to the undersigned in its verbal discussions with your Mr. Andy Matula, TSO-GPPB, that the Board could not act on the said request for opinion relative to the posting, an award having been made to a winning bidder, we hereby withdraw the aforesaid letter inquiry.

Both parties agreed on the view that after bidding and award, the same becomes for purposes of review of compliance of procedure, a COA matter.

The BAC Certification issued for the purpose of complying with the general pre-release requirement of LBP, and as opined by the GPPB appears to be under the circumstances compliant with the LBP requirements furnished the same.

Thank you and warm regards.

Very truly yours,

ABEL L. SUMABAY
BAC Secretary

12-JUN-2008 12:19



Republic of the
CITY GOVERNMENT
National Road, Putat

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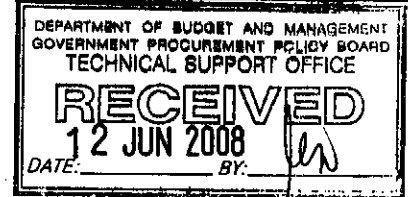
*Pls. handle. Sign
in my behalf.*

6/16/08

BIDS and AWARI

12 June 2008

Atty. RUBY U. ALVAREZ
Executive Director, TSO
Government Procurement Policy Board
Pasig City



Dear Ms. Alvarez,

Pursuant to the release of the City's loan proceeds from the Land Bank of the Philippines, and the terms that was agreed upon with the supplier in the bidding conducted for the purpose where an initial 50% down payment of the purchase price will be released to them, please be informed that consistent with the law more particularly, Sec. 4.3 of Annex D "Contract Implementation Guidelines for the Procurement of Goods, Supplies and Materials" (IRR-A of RA 9184), the LGU has agreed to the said release upon the filing of the supplier of a certification that the said down payment is an a normal practice in their particular industry.

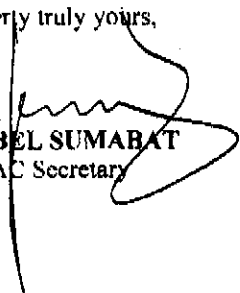
Please be informed that as of this writing, the supplier **PALMER ASIA INC.** has already submitted with this office a copy of the aforesaid certification as required by law.

In view thereof, may we please request your office to note the procedures undertaken and please issue a letter of concurrence on the applicability of the aforesaid law.

The said letter will be filed with the LBP in compliance with their requirement.

Thank you and warm regards.

Very truly yours,


ABEL SUMABAT
BAC Secretary



"FIRE SAFETY IS OUR CONCERN"
PHIL. CHAMBER OF FIRE PROTECTION INDUSTRIES, INC.

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E-Mail: pcfpi@yahoo.com.ph
Chairman's Tel No. 935-3070 / 72 / President's Tel Nos 935-0344 & 939-9082



TO WHOM IT MAY CONCERN;

This is to certify that in the fire protection industry it is a common practice that the customer is required to pay a 50% Downpayment based on the contract price. This requirement is applicable for all fire fighting equipment that are manufactured by the local Fire Protection Companies.

This certification is being issued for whatever purpose it may serve.

Attested by:


J. D. LACSAMANA, SR.
National President

Bids and Awards Committee
CERTIFIED TRUE COPY
By:  Date: 