



TECHNICAL SUPPORT OFFICE

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NPM No. 09-2006

April 10, 2006

MR. FLO G. PASCUAL
Regional Director
NFA, Cebu Regional Office
Gov. M. Cuenco Ave., Banilad, Cebu City

Re : Effect of E-VAT on Procurement Contracts

Dear Mr. Pascual

This refers to your letter dated 08 March 2006 seeking advice on the effect of the implementation of the Expanded Value Added Tax (E-VAT) Law on government contracts which are currently advertised for bids and those which are in the contract implementation stage. In this light the issue posed for resolution is as follows:

Whether or not price adjustment as a result of E-VAT is allowed for contracts which are currently advertised for bids and those which have been awarded.

Contract Price Adjustment

The implementation of EVAT in February 2006 prompted many government agencies to raise the issue of its possible effect on existing contracts of the government and those that have advertised for bids.

As a response thereto, the matter was discussed by the Inter-Agency Technical Working Group (IATWG) of the Government Procurement Policy Board (GPPB) last 05 January 2006 and it was agreed that the issuance of a supplemental/bid bulletin containing the adjusted prices would be the proper recourse of the procuring entity if the bids have not been opened. Supplemental bid bulletins may be issued seven (7) calendar days prior to the deadline for the submission and receipt of bids, pursuant to Section 22.5.2 of the IRR-A which provides:

Supplemental/Bid Bulletins may be issued upon the procuring entity's initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the

deadline for the submission and receipt of bids. Any modification to the bidding documents shall be identified as an amendment. xxx

However, if the bids have been opened at the time of the effectivity of the EVAT law, then the procurement activity shall be continued until contract award, subject to the subsequent agreement between the procuring entity and the winning bidder of corresponding price adjustments as may be necessary in accordance with Section 17.7.4 of the IRR-A, quoted hereunder to wit:

Section 17.7.4 of the IRR-A of R.A. 9184

Before submitting their bids, the bidders are deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect the contract in any way. **However, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations or other acts of Government promulgated after the date of bidding, a contract price adjustment shall be made** or appropriate relief shall be applied on a no loss-no gain basis, provided such is not covered by the contract provisions on price adjustment. (Emphasis supplied)

Moreover, the winning bidder is also required to provide for a sufficient basis to justify the requested contract price adjustment. Further, the bidder should also show proof of the substantial effect of the new law, ordinance, regulation or any other act of the Government to the contract price, thereby necessitating a contract price adjustment.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters.

Very truly yours,


ESTANISLAO C. GRANADOS JR.
Executive Director IV