

**GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE****NPM No. 100-2012**

13 August 2012

MR. JUN MERCADO*System Consultant***STRATEGIC SYNERGY, INC. (SSI)**

7/F @5600, 5600 Sergio Osmeña Highway cor.

Arellano St. Palanan, Makati City

Re: Items/Services Included in the Terms of Reference (TOR)

Dear Mr. Mercado:

We respond to your letter dated 18 June 2012 requesting clarification on whether a winning bidder may be compelled to deliver items/services that are not specifically identified and mentioned in the TOR but merely interpreted as "understood". It is represented that although SSI was recently awarded a project, there were confusions on the interpretation of the TOR.

For your guidance, under Section 17.1 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, the TOR forms part of the Bidding Documents in the procurement of consulting services. The Bidding Documents refer to documents issued by the procuring entity as the basis for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required by the procuring entity (PE).¹ Evidently, the Bidding Documents contain all the specific requirements, limitations and parameters of the procurement at hand, as determined by the PE.

Clarifications, modifications, changes or amendments to the Bidding Documents, which include the TOR, must be reflected through the issuance of the corresponding Supplemental/Bid Bulletin, and posted in the websites of the Philippine Government Electronic Procurement System (PhilGEPS) and the concerned PE.² This is important to inform the prospective bidders of the revised requirements, if any, and to afford them the opportunity to comply with it. Consequently, if no Supplemental/Bid Bulletin is issued to reflect changes in the Bidding Documents and the TOR, the original provisions remain and the prospective bidder, including the winning bidder cannot be compelled to abide or comply with the changes made by the PE.

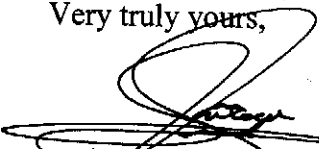
¹ Section 5(f) of the IRR of RA 9184.

² Sections 22.5.2 and 22.5.3 of the IRR of RA 9184.

Based on the foregoing, we are of the opinion that in the absence of the Supplemental/Bid Bulletin reflecting the appropriate changes in the Bidding Documents or TOR, the PE could not compel prospective bidders or the winning bidder to deliver items/services, which were not specifically identified and mentioned in the Bidding Documents or TOR. The interpretation laid down, that is, the changes in the Bidding Documents or TOR are as "understood" will be unenforceable for failure to comply with the conditions under Sections 22.5.2 and 22.5.3 of the IRR of RA 9184.

We hope our advice provided sufficient guidance on the matter. Note that this opinion is being issued on the basis of facts and particular circumstances presented, and may not be applicable to a different set of facts and circumstances. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



DENNIS S. SANTIAGO
Executive Director III

//LSD3 *gllm*