



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

NPM No. 141-2014

9 December 2014

KATAMBAYAN S. CELINO

Vice President

NATIONAL POWER CORPORATION (NPC)

Quezon Avenue corner BIR Road, Diliman,
1100 Quezon City, Philippines

Re: DOLE Department Order No. 18-A and Government Procurement Policy Board (GPPB) Policy Matter (PM) Opinion No. 03-2012

Dear Vice President Celino:


This refers to your letter requesting clarification on the applicability of Section 9(b)(ii) of DOLE Department Order (DO) No. 18-A, and GPPB PM Opinion No. 03-2012, dated 30 November 2012, on the minimum administrative fee in service agreements.

We wish to reiterate GPPB's position in GPPB PM Opinion No. 03-2012 that DOLE DO No. 18-A is INVALID, thus:

Considering that the computation for the cost of a service contract/agreement involves factors, the respective amount of which are set by law, such as the items identified as Reimbursable Costs under Annex "A" of DOLE DO 18-A, requiring servicing agencies to adopt administrative fee that is at least ten percent (10%) of the total contract cost effectively prohibits them from offering bids lower than the sum of the Total Reimbursable Costs and ten percent (10%) administrative cost.

This scenario results in the imposition of floor in bid prices, which clearly runs counter to the pronouncement in Section 31 of RA 9184 and its revised IRR that "[t]here shall be no lower limit to the amount of the award." (Emphasis supplied.)

While Section 31 of RA 9184 states that there shall be no lower limit or floor to the amount of the award, the imposition of a standard administrative fee of not less than ten percent (10%) of the total contract cost for service agreements under Section 9(b)(ii) of DOLE DO No. 18-A contravenes such provision. The Supreme Court in *Philippine Sports Commission, et. al. v. Dear John Services, Inc.*¹ held that:

Section 25² of E.O. No. 40 and its IRR prohibit the BAC from imposing a minimum amount to be offered in the bid. It states: 

¹ G.R. No. 183260 dated 4 July 2012

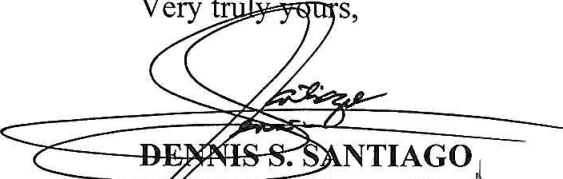
² Adopted in Section 31 of RA 9184 and its revised IRR.

Section 25. Ceiling for Bid Price. The approved budget for the contract shall be the upper limit or ceiling for the bid price. Bid prices which exceed this ceiling shall be disqualified outright from further participating in the bidding. There shall be no lower limit to the amount of the award. For this purpose, the approved budget for the contract shall be that approved by the head of the agency. [Underscoring supplied]

Consequently, the provision in the “*Instruction to Bidders*” stating that no award of the contract shall be made to a bidder whose bid price is lower than the allowable government estimate (*AGE*) or AAE is not valid.

We hope that this opinion issued by GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situation 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

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