

REPUBLIC OF THE PHILIPPINES
GOVERNMENT PROCUREMENT POLICY BOARD
Technical Support Office

*Unit 2506 Raffles Corporate Center, Emerald Avenue, Ortigas Center, Pasig City
Telefax Nos. (02) 900-6741 to 44*

NPM No. 151-2004

December 9, 2004

HON. AUSTERE A. PANADERO

Assistant Secretary
Department of Interior and Local Government
A. Francisco Gold Condominium II EDSA cor.
Mapagmahal St., Diliman, Quezon City

Re : Hospital Equipment assistance Project (HEAP) of the Department of the Interior and Local Government (DILG)

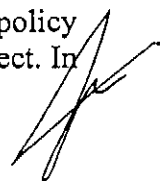
Dear Assistant Secretary Panadero:

This refers to your letter, dated 19 November 2004, raising concerns attending the Hospital Equipment Assistance Project (HEAP) of the Department of the Interior and Local Government (DILG). As represented, the project is proposed for funding from the Government of Spain under a Memorandum of Understanding (MOU) signed between the Spanish Government and the Philippine Government on June 30, 2000. In compliance with the procurement procedures embodied in the said MOU and the provisions of E.O. 302, a competitive bidding was conducted in 2002 that resulted in the award of a supply contract to Eductrade, S.A.

Upon receipt from Spain of the approval of the funding for the project, the Department of Finance should have initiated loan negotiations with the Government of Spain but was however constrained by the fact that the NEDA Board-approved amount was less than the peso amount of the loan it would negotiate for due to the US\$-Peso foreign exchange fluctuation. In other words, the government's fiscal condition and the developments springing therefrom have disposed the DILG to downscale the project to the available appropriated amount. Hence this issue at our disposal:

Whether or not in the process of implementing the downscaling of the HEAP another bidding process is required.

The foregoing issue was raised before this office in light of the need by the DILG for policy guidance prior to the conduct of supplemental negotiations for the implementation of the project. In



this connection, opinion of this office regarding the matter was rendered by way of phone conversation¹ principally advancing the same reasoning as contained in this succeeding discussion.

Another bidding process is no longer necessary

The downscaling of the project no longer requires another bidding process. This view finds foothold in the following factual considerations:

First, as represented, the bidding process has long been consummated and the supply contract awarded way back April 4, 2003. As of that date, the winning bidder has been identified and the entire bidding procedure terminated by the award of the contract to said winning bidder. Interestingly, what is delayed or stalled by unfavorable supervening economic and fiscal conditions are the contractual negotiations and the subsequent implementation of the contract. As a result, the bidding procedure already accomplished remains undisturbed and untainted by the seemingly impedimental developments.

Second, the provisions of the loan agreement with the Government of Spain take both significant and primary character in the appreciation of the implications of the contemplated downscaling of the project. It has to be borne in mind that, generally, grants of foreign governments are beyond the domain of Republic Act No. 9184;² and necessarily, procurement matters are subject to the agreements of the parties to said grant.³ Consequently, the parties may likewise agree (anew) on the terms and conditions of the agreement without having to contend with the provisions of R.A. 9184.

Therefore, should the supplemental negotiations between the government of Spain and the representatives of the Philippine Government yield an understanding to accommodate or approve of the downscaling of the project without need of further bidding process, the same shall be observed in our jurisdiction. And in the event that the parties fail to stipulate on said agreement, bidding process is still unnecessary for the reason maintained in the foregoing discussion.

We trust that this clarifies matters.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director

¹ TSO conversations with Ms. Dita Gotis of DILG on Dec. 1 and 6, 2004 .

² Also known as "Government Procurement Reform Act."

³ See Section 4 of R.A. 9184.

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November 24, 2004

HON. AUSTERE A. PANADERO

Assistant Secretary
Department of Interior and Local Government
A. Francisco Gold Condominium II EDSA cor.
Mapagmahal St., Diliman, Quezon City

Dear Assistant Secretary Panadero:

This is with reference to the letter dated November 18, 2004, addressed to the Honorable Secretary Emilia T. Boncodin as Chairperson of the Government Procurement Policy Board (GPPB), which we received on November 22, 2004, regarding the Hospital Equipment Assistance Project (HEAP) of the Department of Interior and Local Government (DILG), specifically requesting that the downscaled project no longer be procured through public bidding.

We wish to inform you that we are presently reviewing the circumstances and issue relevant to your request. Atty. Salvador C. Malana III, Head of our Legal and Policy Group, will be coordinating with your office within the week to gather additional information on the matter. In this regard, we respectfully request for a point person to whom we shall communicate with regarding any additional information that may be needed in the event referral of the issue to the GPPB is found to be more appropriate.

Very truly yours,



JOSE MARTIN C. SYQUIA
Executive Director III

RESPONSE SHEET FOR PHONE OPINIONS

PhO No. _____

Date Received: Nov. 22, 2004 Date Called: Dec 1, 2004Requesting Entity: DILG (ASST. SECRETARY AUSTERE PANADERO)Contact Person / Number: DITA GOTS / PILAR GATPATAN (929-9609)

Issue(s) / Request(s): _____

Whether or not the downscaled HEAP of the DILG
no longer needs to undergo another bidding process

Response: The downscaled project no longer needs to
undergo another bidding process.

First, in compliance with an MOU signed between
Spain and the Philippines on June 30, 2000, a
bidding procedure has already been ~~consummated~~ conducted
and completed in 2002 and the winning bidder
was awarded the contract on April 4, 2003. ~~and~~
~~before the~~

Second, only the implementation of the
contract was unenforced due to the delay in
the release of the fund as a consequence of
some financial constraints and unfavorable fiscal
situation.

Hence, on the basis of the foregoing considerations,
the project may be undertaken further without need
of a re-bidding process. This is also in light of
the fact that the same may be proceeded only
by way of a supplemental agreement.

Remarks:

Assigned to:

Written Opinion requestedAtty. Badal Jr.