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. 158-2004

December 16, 2004

SSUPT. JOSE E. COLLADO
Chairman
Bids and Awards Committee
Bureau of Fire Protection

Re : Application of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations (IRR-A)

Dear Senior Superintendent Collado:

This refers to your letter dated December 6, 2004 which we received on even date, requesting for clarification on Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) with the sole substantive issue, to wit:

> Whether or not it is proper for the BFP-BAC to disqualify a bidder whose total bid after computation (unit price x number of units) exceeds by two pesos and sixty eight centavos (P2.68) the Approved Budget for the Contract (ABC).

The bidder referred to in this query apparently tendered a total bid price proposal which is well within the ABC. However, during the detailed evaluation of the bid, the computation of the unit price multiplied to the number of units yielded an amount above the ABC. Hence, this query on the propriety of disqualifying said bidder from the bidding being conducted.

Discrepancy between total prices and unit prices: the latter shall prevail

In view of resolving the issue before this office, we first take into account the prescription in Section 32.4.3 of IRR-A which explicitly provides:

> In case of discrepancies between: (a) bid prices in figures and in words, the latter shall prevail; **(b) total prices and unit prices, the latter shall prevail;** (c) unit cost in the detailed estimate and unit cost in the bill of quantities, the latter shall prevail.[1]

[1] Emphasis supplied

Bid Evaluation: Ceiling for Bid Prices

Under Section 31 of the IRR-A, bid price higher than the approved budget for the contract under bidding disqualifies the bidder from said bidding. The provision states:

> "The approved budget for the contract under bidding shall be the upper limit/ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with this IRR-A, is higher than the approved budget for the contract under bidding, the bidder submitting the same shall be automatically disqualified. There shall be no lower limit or floor on the amount of the award."

Hence, the disqualification of the bidder at focus in this issue is well within the meaning of the law and the contemplation of its provisions. Sadly though, what appears to be an oversight in the arithmetical preparations of the bid proposal results to a loss of a potential gain by the government. Nonetheless, there is no better way to protect the interest of the government than to strengthen the measures against loose discretions. The law and its strict implementation remain to be the ultimate mechanism with which government interest is advanced.

We trust that this clarifies matters.

Very truly yours,

JOSE MARTIN C. SYQUIA
Executive Director III

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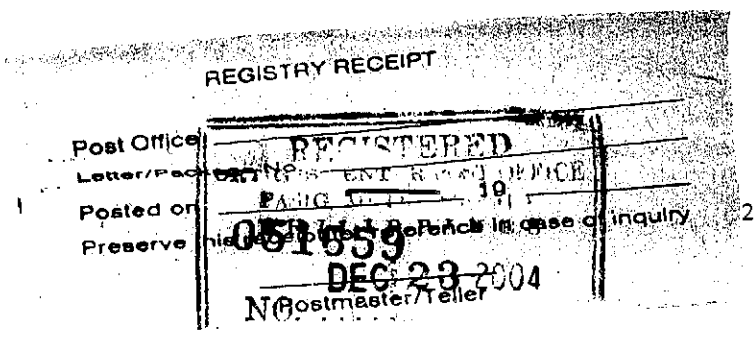

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Telefax Nos. (02) 900-6741 to 44

December 7, 2004

MR. JOSE E. COLLADO
Senior Superintendent
Deputy Chief for Administration
Chairman
Bids and Awards Committee
Bureau of Fire Protection

Dear Mr. Collado:

This refers to your letter dated 06 December 2004, which we received on even date, addressed to Executive Director Jose Martin C. Syquia, requesting for clarification on Republic Act 9184 and its Implementing Rules and Regulations Part A, specifically with respect to its application on your agency's procurement of Fire Fighting Coats.

We wish to inform you that we shall respond to your concerns either through phone or in writing at the earliest possible opportunity, or raise the same to the Government Procurement Policy Board for appropriate resolution should referral thereto becomes necessary.

Very truly yours,

ATTY. SALVADOR C. MALANA III
Head, Legal and Policy Group

cc:
Rogelio F. Asignado, CESO IV
CSUPT (DSC)
Officer-in-Charge
BFP

RESPONSE SHEET FOR PHONE OPINIONS PhO No. 913222 79

Date Received: December 6, 2004 Date Called: December 8, 2004

Requesting Entity: Bureau of Fire Protection

Contact Person / Number: Senior Superintendent Collado

Issue(s) / Request(s):

If it is proper for the BFP-BAC to disqualify a bidder whose total bid after computation (unit price x number of units) the same exceeded the approved budget contract by ~~the~~ 2 pesos and sixty eight cent avos although its total bid price indicates the exact figure with the agency budget

Response: IRR-A of RA 9184 explicitly states in Section 7.1 thereof that "all procurement should be within the approved budget of the procuring entity" and with mentioning in Section 31 of the aforementioned law which states "The approved budget for the contract under bidding shall be the upper limit/ceiling for acceptable bid prices. If a bid price, as evaluated and calculated in accordance with this IRR-A, is higher than the approved budget for the contract under bidding, the bidder submitting the same SHALL BE AUTOMATICALLY DISQUALIFIED. There shall be no ~~limit~~ lower limit or floor on the amount of the award.

Following the non discretionary pass-fail criteria we adhere to, PANPISCO, although offering a better bid since the quantity it offered is twice the offer made by the other bidders, it is still considered an ineligible bidder and is automatically disqualified

Remarks: still in need of a written opinion

Assigned to: Atty Ating