

NPM No. 31-2008

26 September 2008

MR. NORIEL P. DEVANADERA

Deputy Administrator and Chairperson

Joint OWWA-POEA Bids and Awards Committee

OVERSEAS WORKERS WELFARE ADMINISTRATION

DEPARTMENT OF LABOR AND EMPLOYMENT

OWWA Center Bldg., F.B. Harrison St.,

Cor. 7th St., Pasay City

Re : Adjustment of the ABC

Dear Mr. Devanadera:

We respond to your letter, dated 17 September 2007, requesting for clarification on whether the Bids and Awards Committee (BAC) can resume the bidding process for its Seafarer's Identification Document (SID) Project even though changes were made on its Approved Budget for the Contract (ABC) and technical specifications.

In your letter, you stated the following factual considerations:

1. Advertisement/posting and pre-bid conference for the SID project were conducted last January 2006.
2. Before the scheduled bid opening, a case was filed and a Temporary Restraining Order was issued enjoining the BAC to postpone the bidding process.
3. The complaint filed was dismissed by the trial court for lack of jurisdiction.
4. In July 2007, the Office of the Solicitor-General opined that the BAC may lawfully proceed with the bidding for the SID project absent any injunctive writ from the Court of Appeals or Supreme Court.
5. The BAC now intends to conduct another pre-bid conference before proceeding with the eligibility check and bid opening.
6. The BAC also believes that, the ABC needs to be adjusted downwards to reflect actual market prices, and, the technical specifications should be amended to reflect the current requirements of the agency.

In view of the above, the OWWA-POEA BAC now seeks clarification if they can simply resume the postponed bidding after changes to the ABC and the technical

specifications are made, in light of GPPB Resolution No. 07-2005 which requires a re-bidding with re-advertisement/posting in cases where the ABC is adjusted.

Please be advised that Section 31 of Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A) provide that the ABC shall be the upper limit or ceiling for bids. Bids higher than the ABC shall be automatically disqualified. Accordingly, all procuring entities are required to indicate the amount of ABC for the project in the IAEB and in the bidding documents to inform all prospective bidders of the ceiling for their bid price.

Furthermore, Section 35 of R.A. 9184 provides that in case of failure of bidding where all bids exceed the ABC, the BAC may modify the terms, conditions and specifications in the first bidding documents to change the scope of work or to adjust the procuring entity's cost estimates or specifications, provided that the ABC shall be maintained.

Finally, as you have correctly pointed out, GPPB Resolution No. 07-2005 dated 01 April 2005 provides in part, and we quote:

"II. The ABC may be adjusted downwards if there is a need to reflect actual market prices and/or scope of work or suit actual field conditions of the project.

III. Upon adjustment of ABC, the procuring entity must conduct re-bidding with re-advertisement/posting. Any succeeding adjustment of the ABC shall be in accordance with these guidelines."

Inarguably, the aforementioned provisions are clear and unequivocal. Hence, the well-established principle of statutory construction that where the law speaks in clear and categorical language, there is no room for interpretation or construction; there is only room for application¹ holds true in this case.

Based on the foregoing, this office is of the view that OWWA-POEA can legally adjust the ABC downwards, provided that:

- (1) the adjustment is made to reflect current market prices and/or to suit actual field conditions of the project; and
- (2) a re-bidding with re-advertisement and/or re-posting is conducted.

We trust to have clarified the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

¹ Statutes, Samson Alcantara, 1997 ed. , p. 36

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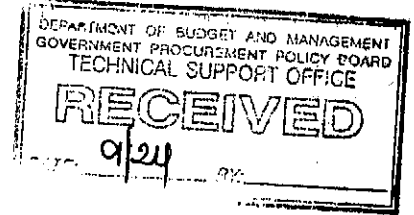
Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Overseas Workers Welfare Administration

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17 September 2007

DIRECTOR RUBY U. ALVAREZ
EXECUTIVE DIRECTOR III
GPPB – TECHNICAL SUPPORT OFFICE
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Pasig City



Dear Director Alvarez:

The Overseas Workers Welfare Administration is in the process of resuming the bidding process for its Seafarers' Identification Document (SID) Project. It started last January 2006 wherein the advertisement / posting and pre-bid conference were conducted. However, a few weeks before the scheduled bid opening, a case was filed and a Temporary Restraining Order was issued enjoining the Bids and Awards Committee (BAC) to postpone the bidding process for the SID Project. The complaint filed was dismissed by the trial court for lack of jurisdiction.

In July 2007, the Office of the Solicitor General (OSG) opined that the Bids and Awards Committee may lawfully proceed with the bidding for the SID Project absent any injunctive writ from the Court of Appeals or the Supreme Court. Hence, the BAC is intending to conduct a pre-bid conference before proceeding with the Eligibility Check and Bid Opening.

In view of the above, we would like to ask for clarifications if the BAC can make changes on the ABC and technical specifications and resume only the bidding process which was postponed last January 2006.

The ABC needs to be adjusted downwards because it is not responsive anymore of the actual market price due to a stronger Philippine peso against the US dollar. More so, the technical specifications of the project have to be amended to reflect the current requirements of the Agency.

However, GPPB Resolution No. 07-2005 provides that an adjustment of the ABC would require a re-bidding with re-advertisement/posting. Further, Section 41.1(c) of the Implementing Rules and Regulations of the Republic Act 9184 states that

"The procuring entity reserves the right to reject any and all bids, declare a failure of bidding or not award the contract in the following situations... (c) For any justifiable and reasonable ground where the award of contract will not redound to the benefit of the Government as follows (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially, technically feasible as determined by the head of the procuring entity. x x x"

Your prompt response will be highly appreciated.

Thank you.

Truly yours,

NORIEL P. DEVANADERA
Deputy Administrator and Chairperson
Joint OWWA-POEA Bids and Awards Committee