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NPM No. 35-2007

6 August 2007

MR. MARCIAL B. LICHAUCO

General Manager

911 ALARM, INC.

2nd Floor DPC Place Building,
2322 Don Chino Roces Avenue
1221 Makati City

Re: Sample Form of the Cash Deposit Certificate

Dear Mr. Lichauco:

We respond to your letter dated 27 June 2006 requesting for clarification on the legal basis of Sample Form-Good No. 16 [SF-Good-16] for a cash deposit certificate. Said form, to be issued by a bank, certifies that the bidder's account in an amount not lower than that set by the procuring entity in the bidding documents shall be put on hold for the procuring entity until the duration of the project. You mentioned that the form is deficient since it does not provide for a mechanism by which the amount on hold can be drawn by the procuring entity.

It bears stressing that the sample forms, vis-à-vis the standard forms which are compulsory in character, merely serve as guides. The wording of said forms may be changed by procuring entities and bidders provided the language is consistent with the purpose and intent of the law.

Under Section 23.6 (j) of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184), the prospective bidder must submit any of the following: (i) a commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid, or (ii) a cash deposit certificate in an amount not lower than that set by the procuring entity in the bidding documents, which shall be at least equal to ten percent (10%) of the Approved Budget for the Contract (ABC) for the contract to be bid; or (iii) must have a Net Financial Contracting Capacity at least equal to the ABC for the contract to be bid.

The rationale behind Section 23.6 (j) of the IRR-A of R. A. 9184 is to establish the bidder's liquidity and capacity to absorb the additional obligations in connection with the contract to be bid. Thus, the absence of any statement in the cash deposit certificate - that there is a hold-out on cash deposit equal to the amount stipulated in the bidding documents and that the same is relevant to a specific project would unduly defeat the objective of said requirement in requiring the certification, which is to safeguard the interest of the procuring

entity by ensuring that the bidder has the necessary resources to successfully implement and complete the project to be bid.

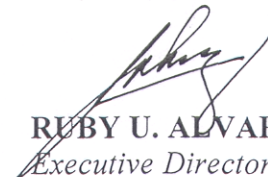
Consequently, if the bidder opts to submit a cash deposit certificate; said certificate must comply with the following requirements:

- (a) It must contain a clear commitment to hold out a specific amount of cash;
- (b) The amount of cash being held out must not be lower than that set by the procuring entity in the bidding documents, which is at least equal to ten percent (10%) of the ABC;
- (c) It must be specific to the contract to be bid; and
- (d) The commitment must be issued by a licensed bank. (NPM No. 15-2006 dated 07 November 2006)

Further, per your advice, this Office will review SF-Goods-16, in consultation with the Bankers Association of the Philippines, to ensure that the same is sufficient in form and enforceable under current banking laws and practices. Pending said review, if the procuring entity determines that the language of the cash deposit certificate meets the foregoing requirements, the cash deposit certificate submitted is presumed to have complied with Section 23.11.1 of the IRR-A of R. A. 9184.

We hope 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