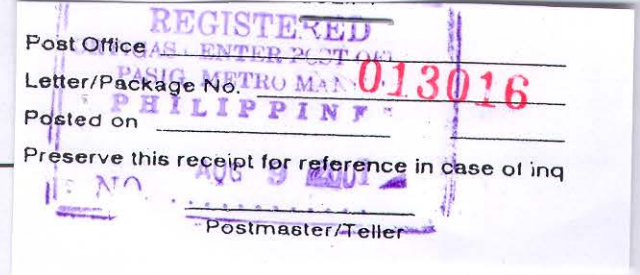




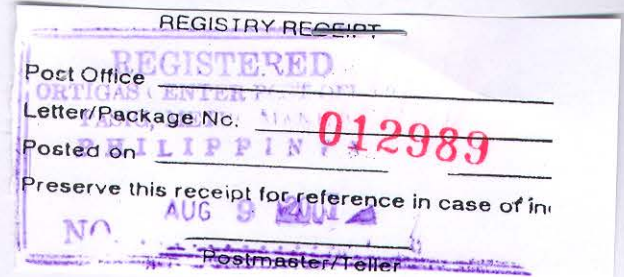
TECHNICAL SUPPORT OFFICE



NPM No. 39-2007

6 August 2007

DIRECTOR DOMINADOR M. GAMBOA
*Head, Bids and Awards Committee Secretariat and
Director II, Procurement and Supply Management Service*
HOUSE OF REPRESENTATIVES
Constitutional Hills, Quezon City



**Re : Eligibility Requirements and
Request for Contract Price Escalation**

Dear Director Gamboa:

We respond to your letter dated 13 June 2006 raising the following issues:

- “1. Whether the Bids and Award Committee (BAC) may exercise discretion in the interpretation and determination of compliance of an additional, as opposed to standard or prescribed, eligibility requirements under the Government Procurement Reform Act?
2. Whether an alternative eligibility statement or document submitted by a prospective bidder may qualify as a legal and valid substitute in good faith and in substantial compliance of the particular eligibility requirement (i. e. Official Receipt in lieu of current Mayor’s Permit/Municipal Permit) in case the BAC has objectively determined that the finding of fault in the non-submission of the required eligibility document may be directly attributed to the failure, delay or inaction of the issuing authority?
3. Whether an escalation in the selling price of food products sold by food concessionaires may be permitted in the light of prevailing economic and market conditions despite prior expressed prohibition mutually agreed upon by the Contracting Parties?”

As regards your first query, Section 17.3 of the Implementing Rules and Regulation Part A (IRR-A) of Republic Act No. 9184 (R. A. 9184) allows the procuring agency to require additional document requirements or specifications such as summary of data, facilities and/or services where applicable and necessary to complete the information required for the bidders to prepare and submit their bids. The procuring entity may also require other appropriate licenses to be submitted as eligibility requirements whenever necessary and

applicable taking into account the size, cost and type of project being bid out (Sections 23.6.1 and 24.7.1, IRR-A).

The BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of the bidder's eligibility requirements or statements against a checklist of requirements using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid (IAEB), and shall be determined as either "eligible" or "ineligible" (Section 23.2 of the IRR-A).

Thus, the BAC may require additional documents to be submitted. However, the BAC shall only use the non-discretionary "pass/fail criteria" in determining the existence or non-existence of said additional document/s required in the IAEB.

As regards the second query, acceptance of an alternative eligibility document or statement submitted by the bidder will lead to an exercise of discretion among the BAC members – an action which R. A. 9184 and its IRR-A expressly prohibit during the eligibility check and bid evaluation. In using the non-discretionary "pass/fail" criteria under Section 23.2 of the IRR-A, the BAC merely checks for the presence or absence of the required document. A bidder is declared to be eligible if such document is present, complete, and sufficient. Otherwise, the absence, incompleteness, or insufficiency of a requirement will result to a bidder's ineligibility to bid. (NPM 007-2006 dated 06 April 2006)

Thus, the submission of an alternative document other than that required by the procuring entity as contained in the bid documents cannot be considered as sufficient compliance, regardless of whether the non-issuance of the required document is due to the fault of issuing authority.

Finally, as regards your last query, all bid prices shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board [GPPB] (Section 6.1.1 of the IRR-A). The burden of proving the occurrence of extraordinary circumstances that will allow for price escalation shall rest with the entity requesting for such escalation.

The procedure to file for a request for price escalation under the GPPB Guidelines for Contract Price Escalation is as follows:

1. The head of the procuring entity shall endorse the request for price escalation to the National Economic Development Authority [NEDA] accompanied with the required documents;
2. NEDA shall review the legal and technical parameters and submit its recommendation to the GPPB;
3. The GPPB shall approve or act upon the recommendation of the NEDA. (GPPB Resolution No. 08-2005)

Consequently, a determination of whether such escalation occurred under extraordinary circumstances would still have to be made by NEDA in accordance with prevailing guidelines.

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

Copy Furnished:

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