

NPM No. 39-2009

29 July 2009

MR. LEONARDO REY D. VASQUEZ

General Manager A

ZAMBOANGA CITY WATER DISTRICT

Pilar Street, Zamboanga City 7000

**Re: Requirement of Financial Statements to be Stamped
"Received" by the BIR**

Dear Mr. Vasquez:

This is in response to your letter of 9 June 2009 seeking guidance on the requirement pursuant to Government Procurement Policy Board (GPPB) Circular No. 01-2004, dated 22 December 2004 as reiterated under the Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184), for the prospective bidders' financial statements to be stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions.

As per your representation, we gather that the sole bidder for the procurement, through competitive bidding, of one (1) unit submersible motor for a production well by the Zamboanga City Water District (ZCWD), would qualify as the lowest calculated and responsive bid, were it not for its failure to submit its Financial Statement as stamped "received" by the BIR.

The ZCWD, as the procuring entity, thereby seeks guidance on whether (1) it may "post-audit" the financial statement by requesting BIR to authenticate that the same document was submitted for income tax purposes, and to award the contract to the said bidder in case of compliance; or (2) it should declare the bidder as "failed" applying the pass/fail criteria.

Clarification is also sought whether the procuring entity should declare failure of bidding or proceed with the awarding of the contract if more than one (1) bidder participated in the bidding and all have failed to comply with the abovementioned requirement.

Under Section 23.2 of the IRR-A of R.A. 9184, the Bids and Awards Committee (BAC), in determining the eligibility of the bidder to participate in the bidding, is mandated to examine the completeness of each of the prospective bidder's eligibility requirements or statements against a checklist of requirements using non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and shall determine the bidder as either "eligible" or "ineligible". In this regard, failure to submit a requirement, or an incomplete or patently insufficient

submission, shall be considered as "failed" and the bidder shall be declared as "ineligible" to participate in the bidding.

Thus, while we understand your sentiment that the failure of the bidders to satisfy the said requirement may not, in all instances, be attributed to them, the guidelines are clear on the requirement. Failure to comply with such is a ground for ineligibility and disqualification.

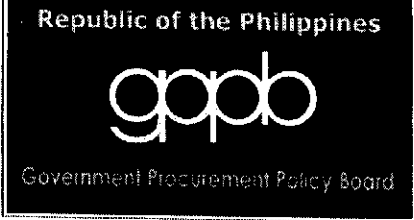
Needless to state, should the BAC, in the exercise of utmost discretion, allow the acceptance of said financial statement, and subject the same to "post-audit" through verification and validation during post-qualification, accountability for such action remains with the ZCWD, as the procuring entity.

Finally, we wish to inform you that our office has been coordinating with the BIR to discuss and resolve matters pertaining to the issuance of tax clearance and other related BIR requirements for bidding purposes.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

Rubia C. Pinano
for **RUBY U. ALVAREZ**
Executive Director III



TECHNICAL SUPPORT OFFICE

7/24

Ma'am Emnie,

Lovey po naipon sa files
ho young mga opinion...
for review po. Thank you
Ma'am...

Center,
Center,
1605

Office

24

MR. LEONARDO REY D. VASQUEZ
General Manager A
ZAMBOANGA CITY WATER DISTRICT
Pilar Street, Zamboanga City 7000

**Re: Requirement of Financial S
"Received" by the BIR**

Dear Mr. Vasquez:

This is in response to your letter of 9 June 2009 seeking guidance on the requirement pursuant to Government Procurement Policy Board (GPPB) Circular No. 01-2004, dated 22 December 2004 as reiterated under the Implementing Rules and Regulations Part – A (IRR-A) of Republic Act No. 9184 (R.A. 9184), for the prospective bidders' financial statements to be stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions.

As per your representation, we gather that the sole bidder for the procurement of one (1) unit submersible motor for a production well ^{through} ~~through public bidding~~ by the Zamboanga City Water District, would qualify as the lowest calculated and responsive bid, were it not for its failure to submit its Financial Statement as stamped "received" by the BIR.

The procuring entity solicits ^{an} legal opinion whether (1) it may "post-audit" the financial statement by requesting BIR to authenticate that the same document was submitted for income tax purposes, and to award the contract to the said bidder in case of compliance; or (2) it should declare the bidder as "failed" applying the pass/fail criteria.

Clarification is also sought whether the procuring entity should declare failure of bidding or proceed with the awarding of the contract if more than one (1) bidder participated in the bidding and all have failed to comply with the abovementioned requirement.

Under Section 23.2 of the IRR-A of R.A. 9184, the ^{spell out} BAC, in determining the eligibility of the bidder to participate in the bidding, is mandated to examine the completeness of ~~the~~ each prospective bidder's eligibility requirements or statements against a checklist of requirements using non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and shall determine the bidder as either "eligible" or "ineligible". In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered as "failed" and the bidder, as "ineligible" to participate in the bidding.

shall be declared as

On the other hand, we understand your sentiment that failure of the bidders to satisfy the said requirement may not, in all instances, be attributed to the bidders. For this reason, it is our opinion that ~~it shall be within the prerogative of the BAC to allow~~ the acceptance of the financial statement even without the stamp from the BIR subject, however, to the condition that the above-mentioned requirement shall be ~~complied with~~ during post-qualification. This shall be applicable regardless of the number of the bidders who participated in the bidding and without prejudice to the fact that accountability remains with Zamboanga City Water District as the procuring entity.

exercise of utmost discretion.

verified + validated

2 CWD

Finally, we wish to inform you that upon effectivity of the Revised Implementing Rules and Regulations of R.A. 9184, the requirement for the prospective bidder's audited financial statements to be stamped "received" by the BIR or its duly accredited and authorized institutions shall no longer be required.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III



Republic of the Philippines
ZAMBOANGA CITY WATER DISTRICT
Office of the General Manager
Pilar Street, Zamboanga City, 7000

Atty. Stycen June 9, 2009.

Pls. draft reply. Strictly speaking,
the bidder should be declared failed.

ATTY. RUBY U. ALVAREZ
Executive Director III
Government Procurement Policy Board
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Rd., Ortigas Center
Pasig City

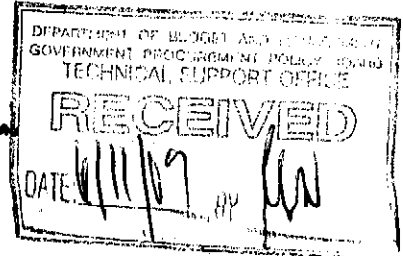
But the proc. entity may exercise discretion
to allow doc. subject to post-
qualification.

the office shares the sentiment of the bidder

re: BIR's "failure to cope".

Dear Atty. Alvarez, inform them that the GPPB has been coordinating with BIR re: this issue.

Pls. handle. Begin in July
8/10/09



This is in connection with the GPPB Circular No. 01-2004 dated December 22, 2004 regarding the requirement of a Financial Statement to be duly stamped "received" by the BIR. In this regard, hereunder are the scenarios of our present situation:

1. A public bidding was conducted for one (1) unit submersible motor for our production well.
2. Only one (1) bidder submitted his bid.
3. Except for the finding that his submitted Financial Statement was not stamped "received" by the BIR, he met all the requirements.

Our queries:

1. Considering our initial investigation which showed that BIR cannot cope up with the stamping of "received" on the Financial Statement due to the volume of taxpayers, should we do a post audit of the Financial Statement by requesting BIR to authenticate if indeed his submitted Financial Statement is the same replica of the Financial Statement he submitted to the BIR for income tax purposes? Or do we just "FAIL" the bidder, to apply the pass or fail criteria?

The reason for this question is because we do not want to delay this project (water to our people).

Republic of the Philippines
ZAMBOANGA CITY WATER DISTRICT
Office of the General Manager
Pilar Street, Zamboanga City, 7000

2. If the BIR authenticate his Financial Statement, can we still qualify him as a responsive and qualifying bidder therefore awarding him the contract as a sole bidder?
3. What if there are more than one (1) bidder and all have failed due to the no stamping of "received" by the BIR, do we consider the bidding a failure or can we proceed to award a bidder?

The undersigned is of the opinion that if BIR cannot cope up with its work, we cannot penalize the bidders. However, we are still subject to the circular of your office.

Your immediate response is respectfully sought in view of our need to provide potable water as soon as possible to a part of our community.

Muchas gracias.

Very truly yours,


LEONARDO REY D. VASQUEZ
General Manager

GOVERNMENT PROCUREMENT POLICY BOARD

CIRCULAR NO. 01-2004

December 22, 2004

TO: Heads of Departments, Bureaus, Offices and Agencies of the National Government; Government-Owned or Controlled Corporations (GOCCs), Including State Universities and Colleges (SUCs); Local Government Units (LGUs); and All Others Concerned

SUBJECT: Directing All Government Agencies, including LGUs to Deal Only with Bidders whose Financial Statements are Submitted and Stamped "Received" by the Bureau of Internal Revenue (BIR)

1.0 Purpose

This circular is issued to reinforce the provisions of Republic Act No. 9184 (R.A. No. 9184) and its Implementing Rules and Regulations Part A (IRR-A) mandating the submission of financial statements stamped "received" by the BIR; and to ensure that all suppliers, contractors, and consultants dealing in government procurement pay the correct amount of taxes due from them in accordance with the mandate of the law and in consonance with the government's policy of transparency, efficiency, and good governance.

2.0 Coverage

All Departments, Bureaus, Offices and Agencies of the National Government; Government-Owned or Controlled Corporations (GOCCs), Including State Universities and Colleges (SUCs); Local Government Units (LGUs); and all others concerned.

3.0 Rules and Regulations

3.1 Sections 23.6 and 24.7 of the IRR-A of R.A. 9184 requires that, as one of the financial documents to be submitted, the prospective bidder's audited financial statements be stamped "received" by the BIR or its duly accredited and authorized institutions, for the immediately preceding year, showing, among others, the prospective bidder's total and current assets and liabilities; and

3.2 The submission of the aforementioned documents is necessary for the eligibility check of prospective bidders in the Procurement of Goods, Infrastructure Projects, and Consulting Services.

4.0 Effectivity

This circular shall take effect immediately.

EMILIA T. BONCODIN

Chairperson, Government Procurement Policy Board
Secretary, Department of Budget and Management