

NPM No. 42 -2008

27 October 2008

MR. OSCAR G. GARIN

Administrator

PHILIPPINE COCONUT AUTHORITY

DEPARTMENT OF AGRICULTURE

Elliptical Road, Diliman, Quezon City

Re : Single Calculated/Rated and Responsive Bid

Dear Sir:

In letter dated 24 June 2008, your good office requests for confirmation on whether your proposed internal policy, which is intended to limit chances of receiving a single bid, is in accord with Republic Act No. 9184 (R.A. 9184).

Based on your letter, we understand that said proposal is meant to increase competition in the bidding process of the Philippine Coconut Authority (PCA). Under said proposal, PCA may only award a contract if there are at least two (2) eligible bidders who submitted bids. Consequently, if no two bidders passed the eligibility check, said bidding shall be immediately declared a failure, and a re-bidding shall be undertaken by the PCA. This condition shall be disclosed in the bidding documents.

We regret to inform you that said proposal runs counter to the mandate of Section 36 (b) of R.A. 9184. Under said provision of law, the procuring entity is obliged to consider for award a bid even if it were submitted by the sole bidder who passed the eligibility requirements or criteria. For ease of reference, Section 36 is reproduced below in its entirety:

Sec. 36. Single Calculated/Rated and Responsive Bid Submission. – A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:

- a) If after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements;
- b) If after the advertisement, more than one prospective bidder applies for eligibility check, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements; or
- c) If after the eligibility check, more than one bidder meets the eligibility requirements, but only one bidder submits a bid, and its bid is found to be responsive to the bidding requirements.

In all instances, the procuring entity shall ensure that the ABC reflects the most advantageous prevailing price for the Government.

The rationale behind Section 36 of R.A. 9184 is to prevent situations when the procuring entity arbitrarily decides not to award a contract to the sole bid, although said bid is determined to be eligible and responsive. It is a preventive measure meant to check favoritism and subjectivity.

Nevertheless, it bears stressing that the procuring entity still retains the right not to award the contract for justifiable causes enumerated under Sections 35 and 41 of R.A. 9184 and its IRR-A.

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

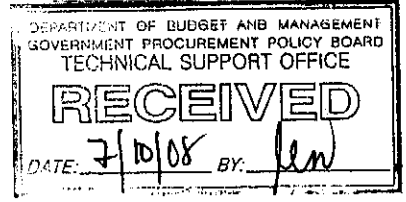


REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF AGRICULTURE
PHILIPPINE COCONUT AUTHORITY

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24 June 2008

HON. ROLANDO G. ANDAYA
Chairperson
Government Procurement Policy Board
Unit 2506 Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City



Dear Secretary Andaya:

We take note of Section 36 of RA 9184 (Government Procurement Reform Act) that allows a sole/single responsive bidder or the single eligible bidder from among one or more ineligible or disqualified bidders, who may be granted an award in public bidding.

Though in several biddings, PCA has complied with the foregoing rule, it has been observed, however, that award to either a sole bidder, or single eligible and responsive bidder who passed the non-discretionary "pass/fail" criteria, had somehow narrowed the chances of competition in the bidding process.

In this connection, the PCA Management intends to encourage wider participation and competition to receive the best offer that is most favorable to the government. For this purpose, PCA proposes to adopt an internal policy of avoiding award to a sole bidder. To realize this intent, PCA may award a contract to the most advantageous evaluated bid only after at least two (2) bidders have been evaluated and declared as eligible based on the non-discretionary eligibility check. This would mean that if no two (2) eligible bidders at the very least have pre-qualified, the bidding will be deemed a failure and will be re-advertised until the minimum requirement is met. This requirement will be included in the published ITB as part of the bid process.

By this internal rule, PCA hopes to encourage wider competition and promote more transparency through greater access in the awarding process.

This policy, however, shall not affect the rule on proprietary bidder or exclusive supplier/service provider. Should this innovation be acceptable, we shall submit the same to our Governing Board for adoption.



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In this respect and before it is submitted for adoption, we are earnestly seeking your opinion on the matter, particularly, its legal validity in relation with existing procurement laws and rules.

Thank you.

Very truly yours,


OSCAR G. GARIN
Administrator