

NPM No. 44-2009

18 August 2009

MS. LOLITA P. MONTANES
Office Manager, PMS
PHILCARE MANPOWER SERVICES, INC.
6111 Albert St., Makati City

Re: Determination of Eligibility

Dear Ms. Montanes:

We respond to your letter dated 9 June 2009 requesting for clarification on certain issues regarding the bidding being conducted by the Department of Transportation and Communication – Metropolitan Rail Transit Authority III (DOTC – MRT III) for its procurement of janitorial services.

In your letter, you state that, during the pre-bid conference, your company sought clarification on Clause 13.2, paragraph a.3. of the Instructions to Bidders (ITB) of the DOTC-MRT III which included the following eligibility requirement, viz:

“Affidavit that the agency has been in continuous operations for the past three (3) years and have experience on same or similar project in mass transport system with certificate of satisfactory performance; and with janitorial experience of five (5) years.”

In this regard, you are inquiring whether your company complies with the above-mentioned requirement taking into consideration its equivalent experience of fifteen (15) years service to the Navotas Fish Port Complex and twenty-five (25) years experience with various hospitals, including the Philippine General Hospital, Philippine Heart Center, National Kidney and Transplant Institute, Veterans Memorial Hospital and the University of the Philippines – Diliman, Quezon City.

Furthermore, you are inquiring whether the above-mentioned eligibility requirement is in consonance with the intent and objectives of Republic Act No. 9184 (R.A. 9184).

At the outset, we wish to inform you that the Government Procurement Policy Board (“GPPB”) and its Technical Support Office (“TSO”) only render policy and non-policy opinions respectively, on issues purely relating to the interpretation and application of our procurement laws, rules and regulations. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding since it has no quasi-judicial functions¹ under the law. Thus, it cannot dictate to the BAC which bidders should be declared as eligible, which bid should be accepted as the lowest

¹ *Quasi-judicial is defined as the term applied to the actions or discretions of public administrative officers or bodies required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action and to exercise discretion of a judicial nature. (See Agpalo, Philippine Administrative Law, 1999 Ed., p. 216 citing Lupangco v. CA, 160 SCRA 848, series of 1988*

calculated responsive bid, and to whom should the contract be awarded. We adhere to the view that the functions of the BAC cannot be interfered with by any government agency since these solely fall within their authority as sanctioned by law, but with the concomitant responsibility that they perform such functions with judiciousness, adhering to the principles of transparency, accountability, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.

Hence, to reiterate, the determination of a bidder's qualification, eligibility and compliance with the requirements for a procurement opportunity lies within the responsibility and discretion of the Bids and Awards Committee (BAC) of the procuring entity concerned. This is expressly stated under Sections 12.1, 23, 30 and 34 of the IRR-A of R.A. 9184.

On the other hand, we wish to emphasize that, while procuring entities are discouraged from requiring additional eligibility requirements that may defeat competition, they are, nevertheless, given the option to:

1. Require other appropriate licenses relative to the subject item of bidding, pursuant to Section 23.6 of the IRR-A; and
2. Clarify in their bidding documents what contracts shall be considered "similar" to the contract to be bid pursuant to Section 23.11.1.2 of the IRR-A as amended.

However, if the bid documents do not specify what contracts are deemed "similar" in nature, clarification on the matter may be made upon request of a bidder or upon initiative of the procuring entity, at the opportune time.

Lastly, a bidder determined as "failed" is not completely devoid of options. Under the IRR-A, it has three (3) calendar days upon written notice, or if present at the time of bid opening, upon verbal notification, within which to file a request for reconsideration with the BAC (Section 30.3, IRR-A). In case of denial, a protest may be made by filing a verified position paper with the head of the procuring entity concerned, accompanied by the payment of a non-refundable protest fee.

We trust that we have provided sufficient guidance on the matter. Should you have any further questions, please do not hesitate to contact us.

Very truly yours,


RUBY U. ALVAREZ
Executive Director III

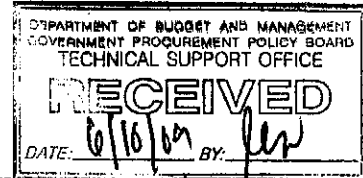


Philcare Manpower Services
6111 Albert Street, Makati City
Tel. No. 890-3537 Fax 899-4871

Janitorial Products & Services – Construction and Developer – Gardening & Landscaping- Garbage Collection

09 June 2009

Government Procurement and Policy Board
Legal and Policy Office
Unit 2506, Raffles Corporation Center
F. Ortigas Jr. Road, Ortigas Center
Pasig City



Dear Sir:

The DOTC-MRT3 Bids and Awards Committee (DOTC-MRT3 BAC) is currently conducting a public bidding for the procurement of Janitorial Services. A pre-bid conference was conducted on 02 June 2009. An inquiry was raised by our company in the ITB 13.2 paragraph (a.3) stating that “affidavit that the agency has been in continuous janitorial operations for the past three (3) years and have experience on same or similar project in **mass transport system** with certificate of satisfactory performance; and with janitorial experience of five (5) years”.

In connection thereof, we would like to seek your opinion whether or not our agency/company (Philcare Manpower Services [PMS]), complies with that requirement as what we have sent a letter of justification in compliance with their requirement. Attached herewith are the 3 letters on justification sent to DOTC-MRT3 BAC, dated May 31, 2009, June 3, 2009 and June 9, 2009.

We are requesting for your opinion whether the abovementioned eligibility requirement is in consonant with the intent and objectives of R.A. 9184.

Thank you.

Very truly yours,


LOLITA P. MONTANES
Office Manager, PMS

CC: ASEC. REYNALDO I. BEROYA

DOTC-MRT3 BAC, Chairman

BAC Secretariat



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PMS. copy

Janitorial Products & Services – Construction and Developer – Gardening & Landscaping- Garbage Collection

June 9, 2009

HON. DOMINGO A. REYES, JR.
ASSISTANT SECRETARY FOR FINANCE
COMPTROLLERSHIP & BAC CHAIRMAN
DOTC – MRT III BAC
MRT 3 Depot Office, North Ave., cor.,
EDSA, North Triangle, Quezon City

THRU: BAC SECRETARIAT

Dear Sirs:

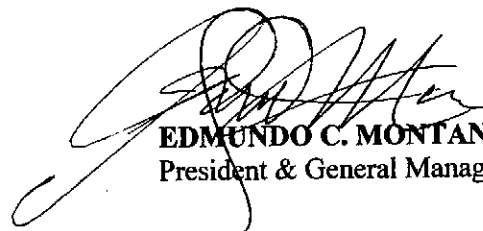
Further to our letter dated June 3, 2009 explaining/justifying our eligibility to participate in the bidding for the 2009 MRT Janitorial Services Contract though we do not have an actual "mass transport system" janitorial experience we are qualified nonetheless on "equivalent" experience based on our fifteen (15) years service to the Navotas Fish Port Complex (the premier fish center of the Philippines and one of the largest in Asia handling 800 tons of fish daily and another 50 tons brought in by over-land vehicles from other provinces of the Philippines [a flyer listing the location and Major Facilities of the Complex is hereto attached as Annex "A"]).

For the record, our janitorial experience at NFPC (taken together with our hospital experience) more than qualifies us to participate in the on-going bidding because the cleanliness and sanitation that we deliver to such huge facility as the NFPC (with big volume of people coming in and out of the Complex 24/7) where daily flushing is done in most of the areas of the facility, is tantamount to... if not more than, "mass transport system" experience.

We trust that with the foregoing justification/explanation as well as your earlier declaration during the pre-bid conference as to the interpretation/meaning of "mass transport system", you will now see your way clear in allowing Philcare Manpower Services to participate in the 2009 MRT bidding for Janitorial Services.

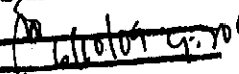
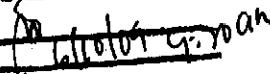
Thank you.

Very truly yours,


EDMUNDO C. MONTANES
President & General Manager

CC: Assec. Reynaldo I. Berroya
GM – MRT III

**DOTC-MRT-3 BAC
SECRETARIAT
RECEIVED**

Signature: 
Date/Time: 



Philcare Manpower Services
6111 Albert Street, Makati City
Tel. No. 890-3537 Fax 899-4871

Janitorial Products & Services – Construction and Developer – Gardening & Landscaping- Garbage Collection

June 3, 2009

HON. DOMINGO A. REYES, JR.
ASSISTANT SECRETARY FOR FINANCE
COMPTROLLERSHIP & BAC CHAIRMAN
DOTC – MRT III BAC
MRT 3 Depot Office, North Ave., cor.,
EDSA, North Triangle, Quezon City

SIR:

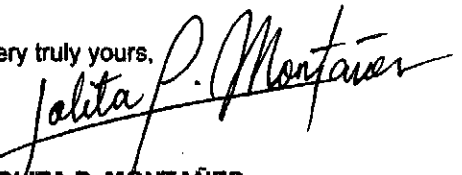
Further to the on-going public bidding for the 2009 Janitorial Services Contract for the MRT III, it may be noted that during the pre-bid conference which was conducted on June 2, 2009, Philcare Manpower Services (PMS) raised the question as to whether the experience acquired by PMS on Janitorial Services of almost twenty-five (25) years now and servicing among others the Philippine General Hospital with a bed capacity of 1,500 beds; personnel of 3,626 (regulars); 440 (contractual) and 503 (outsourced); faculty of 567; trainees of almost 10,000; individuals and patients around 600,000 for the last year. Indoubtively this service that PMS renders to this premier government and biggest tertiary hospital in the country involves the biggest volume of human traffic "big number of people flock within the premises day in day out" and with specialized needs for the patients and doctors' needs and requirements.

In this connection, PMS readiness to handle big volume of work may be gauged by its experiences for about a decade now in the abovementioned big hospital in the country.

It is also significant to state, even though PMS has no actual (present or past experience) with the mass transport system particularly at MRT and LRT but on similar contracts that cater big volume of human traffic "big number of people flock within the premises day in day out" we have Janitorial Services to the biggest Tertiary Hospitals in the country such as the Philippine General Hospital, Philippine Heart Center, East Avenue Medical Center, National Kidney Transplant Institute, Veterans Memorial Hospital, University of the Philippines – Diliman, etc.

Hoping and praying for your kind consideration to allow us to participate in your public bidding for Janitorial Services CY 2009 on June 16, 2009.

Very truly yours,


LOLITA P. MONTAÑES
Office Manager

CC:

Assec. Reynaldo I. Berroya
General Manager - MRT 3

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Philcare Manpower Services
6111 Albert Street, Makati City
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Janitorial Products & Services – Construction and Developer – Gardening & Landscaping- Garbage Collection

May 31, 2009

HON. DOMINGO A. REYES, JR.
ASSISTANT SECRETARY FOR FINANCE
COMPTROLLERSHIP & BAC CHAIRMAN
DOTC – MRT III BAC
MRT 3 Depot Office, North Ave., cor.,
EDSA, North Triangle, Quezon City

THRU: BAC SECRETARIAT

Dear Sirs:


May we be clarify on your criteria requiring that the prospective bidder had an experience on same or similar project in mass transport system. If that is so, you are singling out prospective bidders who do not have such experience and in effect favor those who had such.

This criteria of yours contradict the very essence of a competitive public bidding wherein the bidding process is open to all who has the minimum criteria set forth in R.A. 9184 which concerns mainly on the financial capability of the bidders.

In view thereof, may we request for an immediate response so that we can decide at once whether we will by your bid documents or not.

Thank you very much.

Very truly yours,



LOLITA P. MONTANES
Office Manager

CC: Assec. Reynaldo I. Berroya
GM – MRT III