

NPM No. 46-2008

20 November 2008

MS. PROSERFINA M. MABIOG, MPA
Chairman
BIDS AND AWARDS COMMITTEE
MARINDUQUE STATE COLLEGE
Tanza, Boac, Marinduque

Re : Bidding Process for the Procurement of Security Services

Dear Chairman Mabiog:

This refers to your letter dated 15 October 2008 seeking clarification on certain issues pertaining to the Marinduque State College's procurement of security services under Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations Part A (IRR-A).

As represented, the following facts were gathered:

1. On September 5, 2008, the Bids and Awards Committee (BAC) conducted a combined pre-bid conference and prequalification, during which, the two (2) bidders, NSD Detective and Security Agency (NSD) and Titan Security Agency, Inc. (Titan), respectively, were declared eligible.
2. On 30 September 2008, during the bid opening, NSD was disqualified for failure to submit its bid bond, while Titan's proposal, on the other hand, was accepted.
3. NSD timely filed a Motion for Reconsideration citing several grounds, which motion is still pending resolution by the BAC.

Relative to the foregoing, the following queries are raised:

- 1) *Is it possible to declare the bidding failure? On what ground?*
- 2) *What is the minimum duration of the contract for security services of a security agency?*
- 3) *What is the basis for the computation of bid bond for the bidding on security services? Is it the Approved Budget for the Contract of the Bidder's Bid Offer?*

R.A. 9184 Provides Reservation Clause In Declaring a Failure of Bidding

Section 41 of R.A. 9184 and its IRR-A provides, viz:

“Sec. 41. Reservation Clause. – The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

- (a) If there is prima facie evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- (b) **If the BAC is found to have failed in following the prescribed bidding procedures;** or
- (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government as defined in the IRR. (*emphasis ours*)

Based on the facts, the following observations were noted vis-à-vis the BAC's compliance with prescribed bidding procedures as provided in R.A. 9184, its IRR-A and subsequent relevant issuances:

1. The conduct of a combined pre-bid conference and pre-qualification is not sanctioned under the law nor its IRR-A.. In fact, Government Procurement Policy Board (GPPB) Resolution No. 14-2006 clearly prescribes that there should be different dates for the conduct thereof.

Corollary thereto, the pre-qualification procedure provided under previous procurement laws, has been replaced by an “eligibility check” process under R.A. 9184 which utilizes a transparent, non-discretionary criteria. This eligibility screening involves a simple check of the presence or absence of required documents with the end in view of hastening the process and expanding competition. This is also seen to reduce government costs in procurement as a result.

2. The Approved Budget for the Contract (ABC) must be published/ advertised. Specifically, Section 21 of R.A. 9184 and its IRR-A, mandates the procuring entities to include the ABC in their Invitation to Bids for contracts under competitive bidding, thus:

“Sec. 21. Advertising and Contents of Invitation to Bid. – In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in

order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. xxx xxx

The **Invitation to Bid shall contain**, among others:

xxx xxx

(d) The **Approved Budget for the Contract** to be bid;

xxx xxx" (*emphasis ours*)

The foremost consideration in requiring publication of ABC as part of the Invitation to Bid is the principle of transparency. In so doing, a more competitive public bidding activity is ensured since prospective bidders are well informed of the nature and cost of the project, thereby achieving the principle of competitiveness.

Length of Contract for Procurement of Security Services

Neither R.A. 9184 nor its IRR-A provide for a specific period for the engagement of a security services by a procuring entity. Nonetheless, pursuant to GPPB Resolution No. 24-2007 Re: *Guidelines on the Procurement of Security and Janitorial Services*, procuring entities may enter into multi-year contracts, but not to exceed three (3) years in the procurement of security services, subject only to certain conditions.

Hence, it can be surmised that it is up to the discretion of the agency concerned to determine the period of engagement on the basis of what is appropriate, necessary and reasonable under the circumstances. However, this discretion must be exercised at the opportune time, i.e. during the procurement planning, the project duration, among others, must be determined for purposes of subsequent inclusion in the Terms of Reference of the contract to be bid.

Relative thereto, please take note that no procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the procuring entity, as provided under Section 7 of R.A. 9184 and its IRR-A.

Basis of Computation of Bid Security

It is clear from the provision of Section 27.2 of the IRR-A that the amount of bid security shall be based on the ABC, and not on the bid amount, thus:

"Section 27.2 The **Bid Security shall be in an amount at least equal to, and not lower than, a percentage of the approved budget for the contract to be bid**, as advertised by the procuring entity, in any of the following forms: xxx xxx xxx" (*emphasis ours*)

We trust that this has clarified matters. Should you have additional questions, please feel free to contact us.

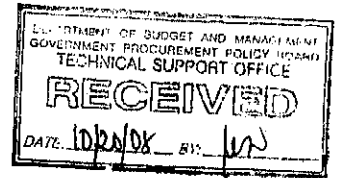
Very truly yours,

Ruby U. Alvarez
for **RUBY U. ALVAREZ**
Executive Director III

420-7777
977-0030
write days
7:00 AM



Republic of the Philippines
MARINDUQUE STATE COLLEGE
Tanza, Boac, Marinduque



Bids and Awards Committee

October 15, 2008

Dir. RUBY U. ALVAREZ
Director
Government Procurement & Policy Board
Unit 2506, Raffles Corporate Center,
Emerald Avenue, Ortigas Center,
Pasig City

Emmie,
Pls. handle. Sign in
my behalf. Lito priority
Proposals

Dear Dir. Alvarez:

This is to respectfully seek advice and enlightenment on the process undertaken by the Bids and Awards Committee of the College for the procurement of services of a licensed security agency.

- On September 5, 2008, the Bids and Awards Committee convened for the combined pre-bid conference and pre-qualification of the two bidders who submitted their letters of intent and eligibility requirements: NSD Detective and Security Agency who was represented by its General Manager, and Titan Security Agency, Inc. who was unrepresented. Upon determining the completeness and validity of all the documents submitted, both agencies were declared eligible to participate in the bidding.
- Among the concerns raised and clarified by the NSD Security during the said activity were the following:
 - Number of Guards to be detailed in the different campuses of the College.
 - Approved Budget for the Contract
 - Duration of the Contract
 - Schedule of the purchase of bid forms
- On September 30, 2008, the date of the opening of bid, NSD failed to enclose bid bond which, pursuant to Section 27 of RA 9184, rendered said agency disqualified for the bidding. The proposal of Titan Security was then accepted and opened, as it qualified and complied with the requirements of the bidding.
- Immediately two days after, the BAC received a motion for reconsideration from the NSD Detective and Security Agency. On a special meeting called for the purpose, the BAC stands on the following:

NSD's Complaints	BAC's Opinion
a. Under ITR second to the last sentence – "the appearance of any representative for the respective bidder in the prequalification of documents are required, for any clarification of the submitted documents to the Bids and Awards Committee."	It was the BAC who called for the combined pre-qualification and pre-bid conference wherein bidders are requested to come should they have any comments/clarification regarding the project to be bid.
It is very clear that representative from bidders are required to attend as mandated under ITR issued by the BAC, reason why the NSDDSSI Management attended such. Attendance sheet given by the BAC as proof	Section 22.2 of RA 9184 states that "the pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. However, attendance of bidders shall not be mandatory." Therefore, Titan's

Not the prescribed procedure; no more pre-qual just eligibility

Kindly draft reply.
Please look at my notes.
Madali lang ito. I think
the BAC needs training on
9184.

TM-4B
DBM - Ms. Teresita
Willaroman
02) 374-7268
374-7269

<p>of our attending the event. For this instance as GPPB Ruling any bidder absent during any stages of the bidding should be declared FAILURE. However, this was not taken in to consideration and the other bidder still attended the Bidding.</p>	<p>absence during the said activity could not be a ground for disqualification.</p>
<p>b. Under ITR third to the last sentence – “<i>all proposals must be accompanied by bid bond in the form of cash, certified check, manager’s check, bank draft issued the commercial bank at 1% of the budget for the contract to be bid, if bid bond is in the form of bank guarantee 1.5%, if surety bond 2.5%.</i>”</p> <p>It was noted during the prequalification that the Approved Budget Contract (ABC) was not yet established. Upon inquiry of NSDDSSI during the prequalification, verbally it was disclosed at P9,545.00 times the required manpower of 19 security guards. However, this was not put into a formal requirement to be included in the bidding since no Bid Bulletin was formally issued by the BAC for all bidders as mandated under GPPB Ruling. Leaving the same item questionable and yet we are declared – FAILED.</p>	<p>Supplemental Bid Bulletin was not issued by the BAC on the presumption that the bidder who was present during the pre-qualification/pre-bid conference had already been clarified on the approved budget for the contract, number of guards, and duration of the contract. The fact that the ABC was disclosed; the amount of bid bond was impliedly established contrary to what NSD claims. And the other bidder had no question though they were not present during the said activity.</p> <p>Moreover, NSD was not declared failed but DISQUALIFIED for failure to submit bid bond.</p> <p>Section 22.5.1 of RA 9184 also states that “<i>Requests for clarification(s) on any part of the bidding documents or for an interpretation must be in writing and submitted to the BAC of the procuring entity concerned at least (10) calendar days before the deadline set for the submission and receipt of bids. The BAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairman, to be made available to all those who have properly secured the bidding documents from the procuring entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids. It shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC.</i>”</p>
<p>c. The statement of one of the BAC members that a sole bidder, who was absent during the pre-qualification, was even declared a responsive bidder.</p>	<p>Section 36 of RA 9184 provides that “<i>A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:</i></p> <p><i>A. If after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR-A, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements.</i>”</p>
<p>d. The Bid Price given by the other bidder is against the Labor Law. The Titan Security Agency bid for P9,100.00 per 8-hours per guard for monthly basis. Under their submitted cost distribution, it was declared that the Average Pay for Guard or the gross</p>	<p>The College’s approved budget for the contract is P9,545.00 per guard for the 19 guards who shall serve for a six-month period in the four campuses of the College. It was, thus, expected that bidders will offer amount lower than the agency’s approved</p>

<p>pay is something like P6,500.00 per guard. Based on the Wage Order No. RB IV-8-04 of Regional Wage Board the daily wage (DW) for this Region is P235.00 per 8-hours totaling to P8,888.33 (DW) not to include the amount to government in favor of guard and Agency Fee and VAT.</p>	<p>budget.</p>
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At the moment the BAC has not yet decided on the bidding. Others concerns/queries that the Committee wishes to raise are:

It's the Proc. Entity's discretion. cite also the Guideline on Security & Janitorial Services (Appendix O, (RR-A) for the BAC's reference

1. Is it possible to declare the bidding failure? On what ground? *YES. Non-inclusion of the ABC in the IAB, among others, plus Sec. 4(1.1b)*
2. What is the minimum duration of the contract for the services of a security agency?
3. What is the basis for the computation of bid bond for the bidding on security services?
4. Is it the Approved Budget for the Contract or the Bidder's Bid Offer?

Copies of pertinent bid documents are attached for your ready reference. We hope that these matters merit your kind attention and immediate action.

Thank you very much.

Very truly yours,

plab
PROSERFINA M. MABIOG, MPA
 Chairman, Bids and Awards Committee

NOTE: Pre-qualification already replaced by eligibility check

Encl:

1. Invitation to Prequalify and to Bid
2. Minutes of the Pre-qualification & Opening of Bid
3. Titan's Bid Proposal
4. NSD's Motion for Reconsideration

472-333



Republic of the Philippines
MARINDUQUE STATE COLLEGE
Tanza, Boac, Marinduque
Telefax Nos. (042) 332-2028/2728
Email Address: msc_president@yahoo.com

Bids and Awards Committee

INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

The Marinduque State College, Tanza, Boac, Marinduque through its Bids and Awards Committee (BAC) invites Licensed Security Agencies to apply for eligibility and to bid for the hereunder project:

Name of Project:

- I. Services of a Licensed Security Agency to be posted/ assigned in the four (4) MSC Campuses

Location:

MSC Boac Campus, MSC Gasan Campus, MSC Torrijos Campus
MSC Sta. Cruz Campus

Contract Duration:

Minimum of Six (6) Months and renewable based on the performance

Prospective bidders should have experience in undertaking a similar project within the last three (3) years. The bidders financial resources allotted to the project shall at least be 50% of the proposed project for bidding. The Eligibility Check/Screening as well as the Preliminary Examination of Bids shall use non-discretionary "pass/fail" criteria. Post-qualification of the lowest calculated bid shall be conducted.

In evaluating offer for security services, the College shall look into the following:

- ξ Submitted pre-qualification documents
- ξ Track record of the security firms
- ξ Cost estimates
- ξ Wages in accordance with labor laws
- ξ Cost of supplies and equipment to be used
- ξ Schedule of hours of service
- ξ License to operate

All particulars relative to Eligibility Statement and Screening, Bid Security, Performance Security, Pre-bidding Conference(s), Evaluation of Bids, Post Qualification and Award of Contract shall be governed by the pertinent provisions of R.A. 9184 and its Implementing Rules and Regulation (IRR).

Bidders are required to submit Letter of Intent (LOI) & pre-qualification documents on or before August 29, 2008 (Monday) to give BAC enough time to evaluate their pre-qualification documents.

A. LEGAL DOCUMENTS

- a. DTI Registration
- b. SEC Registration (for Corporation)
- c. Business Permit
- d. VAT Registration
- e. DTI Accreditation Certificate
- f. Affidavit of "No Blacklist"
- g. License to establish, manage, operate and maintain a private security/detective/investigate agency issued by the OFFICE OF THE CHIEF, PHILIPPINE NATIONAL POLICE

B. TECHNICAL DOCUMENTS

- a. List of Projects handled in the last 3 years, location, agency and amount of the contract
- b. List of Manpower
- c. List of Machine/Equipment owned

C. FINANCIAL DOCUMENTS

- a. Original Financial Statement 2003-2007 received by BIR
- b. Financial Statements should have been stamped "received" by the BIR or duly accredited and authorized institutions

D. EACH STATEMENT NOTARIZED/AUTHENTICATED/SIGNED

The complete schedules of activities are listed as follows:

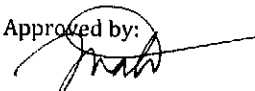
Activities	Schedule	Time
1. Publication, Submission of LOI & Issuance of Bid Documents	July 28-August 29, 2008	8:00am -5:00pm
2. Pre-qualification & Eligibility Check	September 5, 2008	1:30 pm/CCR
3. Opening of Bid & Bid Evaluation & Post Qualification	September 26, 2008	1:30 pm/CCR
4. Notice of Award	October 5, 2008	
5. Signing of Contract	October 12, 2008	

All proposals must be accompanied by bid bond in the form of cash, certified check, manager's check, bank draft issued by the commercial bank at 1% of the budget for the contract to be bid, if bid bond is in a form of bank guarantee 1.5 %, if surety bond it is 2.5 %.

The appearances of any representative for the respective bidders in the prequalification of documents are required, for any clarification of the submitted document to the Bids and Awards Committee.

The College reserves the right to reject any or all bids, waive any formality therein and accept the offer most advantageous to the government.

Approved by:


ROMULO H. MALVAR, Ph. D.
President II
Marinduque State College
Tanza, Boac, Marinduque
Telefax Nos. (042) 332-2028/2728



Republic of the Philippines

MARINDUQUE STATE COLLEGE

Tanza, Boac, Marinduque

Bids and Awards Committee

MINUTES OF THE MEETING

Pre-qualification/Pre-bid Conference of Licensed Security Agencies

September 5, 2008

1:30 pm College Conference Room

Present:

Mrs. Proserfina M. Mabiog Chairman
 Mrs. Ma. Morena V. Santos Secretary
 Mrs. Leonora M. Mapacpac Member
 Mrs. Mercedita M. Hermosa End-user
 Mr. Gilbert Daquioag Gen. Manager, NSD
 Mr. Adolfo Daquioag Sec. Manager, NSD

Upon determining the quorum, the meeting started at 1:50 pm. The Secretary informed that two bidders had submitted their documents for eligibility check: 1.) NSD Detective & Security Agency, and 2.) Titan Security.

Mrs. Proserfina Mabiog, the Chairman, carefully checked the availability and validity of all the documents submitted. Each member of the Committee was requested to put a *check mark* on the distributed checklist of eligibility requirements. First was that of NSD since the company was represented by the General Manager himself Mr. Gilbert Daquioag, and his Security Manager, Mr. Adolfo Daquioag. Second was that of Titan who was not represented. Upon determining the completeness of all the technical requirements, both bidders were declared eligible to participate in the bidding.

NSD asked if they could get their financial statements since those were all originals. Mrs. Mabiog said they could retrieve them provided they would submit instead the certified Xeroxed copies.

Among the matters that NSD clarified were the following:

1. **Approved Budget for the Contract**
2. **Number of Guards**
3. **Duration of the Contract**

Mrs. Morena Santos said that she missed to include in the Invitation to Bid the Approved Budget for the Contract, and that was what Titan Security had also been asking. The Chairman then requested the Budget Officer to present the agency's budget for the project. Mrs. Leonora Mapacpac said that the existing budget is P9,545.00 per guard per month. The College needs a total of 19 guards: 16 to be detailed at the four campuses and three for the convenience store (*which operates on three shifts a day*). As stated on the Invitation to Bid, the Committee confirmed that the contract duration shall be for six (6) months renewable based on the agency's performance.

NSD also asked when they could purchase the bid forms. Mrs. Santos reminded the Chairman that the latter would be on official business the following week and that the MSC-BOT Meeting is scheduled on September 26, 2008. She then asked the possibility of moving the dates of the bidding, as well as the sale of bid forms.

Thus, upon checking on the calendar days and the availability of all the BAC members (whether on official business), the Committee decided to set the giving of bid forms from September 15 to September 30, 2008, and the date of the opening of bids on September 30, 2008.

For further clarification, Mrs. Mabiog asked how much is the minimum wage. But Mrs. Leonora Mapacpac said that the bid should not exceed the agency's budget. That is already the ceiling price.

NSD said that PADPAO is the one rating. It may not be followed, but the company abides by the Minimum Wage Law.


Mrs. Mabiog said that if the College could not accommodate the budget, the number of guards would be reduced. Mrs. Mercedita M. Hermosa, the end-user said, that the guards could render overtime services.

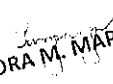
There being no other matters to be discussed, the meeting ended at 4:00 pm. The committee thanked NSD for coming to the meeting. Immediately thereafter, the opening of bids for procurement of equipment followed.


I hereby certify to the correctness of the foregoing information:

MA. MORENA V. SANTOS
Secretary

Attested by:


PROSERFINA M. MABIOG, MPA
Chairman


LEONORA M. MAPACPAC
Member


MERCEDITA M. HERMOSA
End-user



Republic of the Philippines

MARINDUQUE STATE COLLEGE

Tanza, Boac, Marinduque

Bids and Awards Committee

MINUTES OF THE MEETING

Bidding for the Services of a Licensed Security Agency

September 30, 2008

1:30 pm College Conference Room

Present:

Mrs. Proserfina M. Mabiog	Chairman
Engr. Willer A. Dayahan	Vice Chairman
Mrs. Ma. Morena V. Santos	Secretary
Mrs. Leonora M. Mapacpac	Member
Mr. Raul P. Majaba	Rep. of End-user
Mr. Rudy Tan	Gen. Manager, Titan Security
Mr. Michael Tan	Titan Security
Mr. Adolfo Daquioag	Security Manager, NSD

The meeting started at 1:50 pm. Prior to the opening of bids, the two bidders handed their proposal to the BAC Chairman. Engr. Willer A. Dayahan, the Vice Chair, stood to write on the board the summary of the bidding.

The first envelope opened was that of Titan Security. Their bid bond amounted to P27,203.35. However, upon learning that NSD did not have a bid bond, the Chairman immediately returned to the bidders their bid proposals. Mr. Daquioag protested that he did not expect Titan to be present in the meeting. All he knew was that Titan did not qualify because no representative from them came during the Pre-bid Conference. He quoted the statement from the Invitation to Bid that *"The appearances of any representative for the respective bidders in the pre-qualification of documents are required..."*

Mr. Rudy Tan of Titan Security said that they were not informed of the meeting that was why no representative from them came over. Mrs. Morena Santos said that the schedules of the meeting were stated in the advertisement/invitation to bid. She emphasized that there is a provision in RA 9184 that bidders may or may not attend the pre-qualification.

Engr. Dayahan recalled that there was a time when a bidder did not also appear in a meeting. But said bidder qualified upon passing the eligibility check/pre-qualification for documents submitted.

The bidders were then requested to tentatively leave the conference room for the BAC Members to discuss the matter. The Committee thoroughly went over and quoted the pertinent provisions of the Implementing Rules and Regulations of RA 9184.

On the protest of Mr. Daquioag that Titan did not attend the Pre-bid Conference:

Section 22. Pre bid Conference

22.1 For contracts to be bid with an approved budget of one million pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the bidding documents. For contracts to be bid costing less than one million pesos (P1,000,000.00), pre-bid conferences may be conducted at the discretion of the BAC. Subject to the approval, a pre-bid conference may also be, conducted upon written request of any prospective bidder.

1 | Bidding for Security Agency

22.2 The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. However, **attendance of the bidders shall not be mandatory.**

Reading the statements on the advertisement, the Secretary said, that appearances of bidder are required for any clarification of the submitted document to the Committee. Engr. Dayahan agreed and said that Titan might not have any clarification that was why did not attend the pre-bid conference. In the first place, it was the Committee who called the meeting. The Secretary added that NSD was present during the pre-bid conference, but the only things that they clarified were: how many guards, how much is the ABC, and the duration of the contract.

On failure of NSD to submit bid bond:

Section 27. Bid Security

27.1 All bids shall be accompanied by a Bid Security, payable to the procuring entity concerned as a guarantee that the successful bidder shall, within ten (10) calendar days or less as indicated in the Instructions to Bidders, from receipt of the Notice of Award, enter into contract with the procuring entity and furnish the performance security provided for in Section 39 of the Act and this IRR-A. **Failure to enclose the required Bid Security in the form and amount prescribed herein shall automatically disqualify the bid concerned.**

27.2 The bid security shall be in the amount of at least equal to, not lower than, a percentage of the approved budget for the contract to be bid, as advertised by the concerned procuring entity, in any of the following forms:

- a.) Cash, certified check, cashier's check/manager's check, bank draft/guarantee confirmed by a reputable local bank or in the case of a foreign bidder, bonded by a foreign bank;
- b.) Irrevocable letter of credit issued by a reputable commercial bank or in the case of an irrevocable letter of credit issued by a foreign bank, the same shall be confirmed or authenticated by a reputable local bank;
- c.) Surety bond callable upon demand issued by a reputable surety or insurance company;
- d.) Any combination thereof, or
- e.) Foreign governmental guarantee as provided in an executive, bilateral or multilateral agreement, as may be required by the head of the procuring entity concerned.

The required amount of the above forms of security shall be in accordance with the following schedule:

Forms of Security	Minimum Amount in % of Approved Budget for the Contract to be Bid
1. Cash, certified check, cashier's check, manager's check, bank draft or irrevocable letter of credit	One percent (1%)
2. Bank Guarantee	One and a half percent (1.5%)
3. Surety Bond	Two and a half percent (2.0%)
4. Foreign Government Guarantee	One hundred percent (100%)

Engr. Dayahan said that it was clear in the advertisement that "All proposals must be accompanied by bid bond in the form of cash, certified check, manager's check, bank draft issued by the commercial bank at 1% of the budget for the contract to be bid, if bid bond is in a form of bank

guarantee 1.5%, if surety bond it is 2.5%." He added that NSD would have no reason not to know about the submission of bid bond.

The Secretary asked if there was a possibility of declaring the bidding failure. Engr. Dayahan read the following provisions of RA 9184:

Section 35. Failure of Bidding

35.1 *The BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21 of the Act and this IRR-A, after a re-evaluation of the terms, conditions and specifications of the first bidding, when:*

- a.) No prospective bidder submits an LOI or no bids are received;*
- b.) All prospective bidders are declared ineligible;*
- c.) All bids fail to comply with all the bid requirements or fail post-qualification, or in the case of consulting services, there is no successful negotiation; or*
- d.) The bidder with the lowest calculated responsive/highest rated responsive bid refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR-A.*

Engr. Dayahan said that based on those provisions there was no ground to declare the bidding failure. If NSD would be disqualified, Titan would then be a sole bidder, which is acceptable under RA 9184. He further read the succeeding provisions:

Section 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 an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR-A, and it 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 advertisement, more than one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR-A, 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.

The Chairman then sought the opinions of all the members. Weighing all the circumstances, the Committee cannot do away with the provisions. The Committee members unanimously decided to proceed with the opening of bids. Bidders were then called to clarify the matters of argument.

The Chairman took a hard time explaining to the bidders on what the Committee had discussed. She informed that the pre-bid conference was called by the College to clarify the terms and conditions of the contract. She reiterated that NSD's presence during the pre-bid conference implied that all terms and conditions of the project were known to them. But its failure to submit bid bond during the opening of bid automatically disqualified them from the bidding. Engr. Dayahan read the pertinent provisions. NSD thereafter said that they would just file a motion.

The Chairman also clarified that Titan's absence during the pre-bid conference did not render them disqualified for the bidding. The provision is clear that bidder's presence during said meeting is not

mandatory. There was an additional statement in the advertisement that bidders are required, "for any clarification of the submitted document."

The Chairman then asked for Titan's proposal. NSD chose to remain upon invitation that he may see the result of the bidding.

BIDDING FOR SECURITY AGENCY

Name of Bidder	Amount of Bid	Bid Bond
Titan Security Agency	P9,100.00 (price per guard per month) or a Lump sum P1,037,400.00 (19 guards x P9,100 x 6 mos.)	P27,203.35 (surety bond) Eastern Assurance and Security Corp.
NSD Detective and Security Agency		None

Details of Titan's proposal are presented in the attached documents.


Upon thanking the participating bidders, the meeting ended at 4:00 pm there being no other matters to be discussed.

I hereby certify to the correctness
of the foregoing information:


MA. MORENA V. SANTOS
Secretary

Attested by:


PROSERFINA M. MABIOG, MPA
Chairman


WILLER A. DAYAHAN, C.E.
Vice Chairman


LEONORA M. MAPACPAC
Member


RAUL P. MAJABA
Representative of the End-user



Premium _____
 Doc. Stamps _____
 Premium VAT _____
 Indemnity _____
 LBT _____
 Notarial _____
 Total _____

EASTERN ASSURANCE & SURETY CORPORATION

EASCO Building 2654 Sayson Street, Malate, Manila
 Tels.: 524-4363 • 525-6505 • 526-0014 • Fax: 521-4424
 E-mail: info@easternassurance.com

HO / CONTROL No 163046

EASCO NO.

G (2) 021-2246

BIDDER'S BOND

KNOW ALL MEN BY THIS PRESENTS:

That we PRIMA SECURITY AGENCY as principal and the EASTERN ASSURANCE & SURETY CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, as surety, are held and firmly bound unto the MANINDOG STATE COLLEGE in the penal sum of ONE MILLION THREE HUNDRED TWENTY SEVEN THOUSAND TWO HUNDRED THIRTY FIVE (P 1,327,203.35) PESOS Philippine Currency, for the payment of which, and well and truly made, we bind ourselves our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents:

WHEREAS, the above bounded principal will submit his bid on the proposal of.....

for the REPAIR OF A HIGHWAY SECURITY AGENCY TO BE FORMED/ASSIGNED IN THE FORM (A) LSC CAMPUS MANINDOG STATE COLLEGE

1,000,130.00 - - 1,27,203.25

This bond is valid for 120 calendar days from the start of opening bid. Bidding will be held on September 30, 2008, or to any postponed date thereof. This bond is callable on demand in accordance with the amended rules and regulations of R.A. 9154.

is required that a bond in the amount of ONE MILLION THREE HUNDRED TWENTY SEVEN THOUSAND TWO HUNDRED THIRTY FIVE (P 1,327,203.35) PESOS, Philippine Currency be submitted:

NOW THEREFORE, the conditions of this obligation are such that if the above-bounded principal shall, in the event of his becoming successful bidder in the above proposal (1) fails to guarantee the true and faithful performance of the contract in case of award; (2) shall refuse to accept the same or (3) shall not answer for any delay and/or default in the execution of the contract as provided in the proposal, then the obligee shall be entitled to be indemnified of any loss or damage it may suffer by reason thereof not to exceed the sum of ONE MILLION THREE HUNDRED TWENTY SEVEN THOUSAND TWO HUNDRED THIRTY FIVE (P 1,327,203.35) PESOS, Philippine Currency; otherwise the obligation shall be void and without effect.

WITNESS OUR HANDS AND SEALS this 26 day of September, 2008 in Lucena City, Philippines.

(Principal)
PRIMA SECURITY AGENCY
 Authorized Signatory

EASTERN ASSURANCE AND SURETY CORP.

SIGNED IN THE PRESENCE OF:

IV



EASCO BOND NO.

EASTERN ASSURANCE & SURETY CORPORATION**INDEMNITY AGREEMENT**We, the undersigned TITAN SECURITY AGENCY

jointly and severally bind ourselves unto the EASTERN ASSURANCE & SURETY CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the Philippines with extension office in Manila, Philippines, hereinafter called the Company, in consideration of its having become surety upon a BIDDERS BOND

TWENTY SEVEN THOUSAND TWO HUNDRED THREE & 25/100 (P27,203.25) in the sum of Philippine Currency, in behalf of MARIJUQUE STATE COLLEGE and in favor of MARIJUQUE STATE COLLEGE dated September 26, 2008, 20..... a copy of which is hereto attached and made an integral part hereof, under the following terms and conditions:

1. **PREMIUM:** To pay to the Company in advance or on demand, in addition to the cost of documentary and/or science stamps the sum of (P.....) PESOS, Philippine Currency, as premium for each period of or a fraction thereof to be computed; from the date hereof until said bond or any renewal, extension or substitution thereof be duly cancelled in full by the person or entity guaranteed thereby; or by a court of competent jurisdiction. The undersigned hereby expressly waive notice or acceptance and approval hereof, and of any renewal, extension or substitution.

2. **INDEMNITY:** The undersigned, jointly and severally, agree and bind ourselves to indemnify and hold and save harmless the Company from and against any and all damages, losses, stamps, penalties, charges, expenses, and claims of whatsoever kind and nature which the Company shall or at any time incur in consequence of its having become surety upon the aforesaid bond or any renewal, extension, substitution or alteration thereof made at the instance of the undersigned and/or the principal thereof or executed in behalf of the undersigned or the principal, and to pay, reimburse and make a good to the Company its successors and assigns, all sums and amounts of money which it or its representative shall or may pay or cause to be paid or become liable to pay on account of the undersigned or any of us, of whatsoever kind and nature, including twenty (20%) percent of the amount involved in the litigation or other matters out of or connected therewith as attorney's fees but which in no case to be less than P200.00 and which shall be payable whether or not to the case be extrajudicially settled, it being understood that demand upon anyone of the undersigned herein is admitted as demand on all of us. The undersigned further agree, jointly and severally that in case of any extension or renewal of the aforesaid bond, we bind ourselves for the payment thereof including the renewal premium and cost of documentary and/or science stamps every time the same is renewed or extended under the same terms and condition as abovementioned without the necessity of executing another Indemnity Agreement for the purpose and we hereby expressly waive our right to be notified of any renewal or extension of the bond which may be granted under this Indemnity Agreement.

3. **CHARGES IN THE EVENT OF FORFEITURE/CONFISCATION:** In the event of forfeiture or confiscation of the bond, the undersigned, jointly and severally agree to pay the Company by way of liquidated damages the sum of P20.00 per day from date of receipt of the forfeiture or confiscation order issued by the corresponding Court until such time as such forfeiture or confiscation order shall have been lifted or in the event that said forfeiture or confiscation order could not be lifted by reason of its having become final, then we jointly and severally agree to pay sum equal to amount of said bond, whichever between the two amounts is bigger.

4. **CANCELLATION BY COMPANY FOR NON-PAYMENT OF RENEWAL PREMIUMS:** In the event the accused fails to pay the renewal premiums when they fall due the said accused and/or his/her guarantors hereby authorize the Company to file the proper in motion in Court for the cancellation of accused's bond on the ground of non-payment of renewal premiums. This proviso, however shall not be constituted as a bar to the cancellation of accused's bond on other grounds.

5. **INTEREST IN CASE OF DELAY:** In the event of delay in payment of the sum or sums by the undersigned, they will pay interest at the rate of 12% per annum on same, which interest if not paid will be liquidated and accumulated to the capital quarterly and shall earn the same interest as the capital, all this without prejudice to the Company's right judicially or extrajudicially the full payment of its claim.

6. **INCONTESTABILITY AND PROOF OF LIABILITY CLAUSE:** any payment or disbursement made by the Company on account of the aforesaid bond, its renewal, extension or substitution either in the belief that said payment was necessary in order to avoid greater losses or obligations for which the Company might be liable by virtue of the terms of the aforesaid bond, its renewals, extensions or substitutions or to forestall court action against its principal and/or itself shall be final and incontestable and the undersigned unconditionally accept liability therefor jointly and severally in favor of the company. The receipts or other instruments evidencing such payment or disbursement shall be conclusive proof of both the fact of such payment in the date and amount thereof.

7. **WAIVER OR VENUE OF ACTION:** We hereby agree that any such question which may arise between the company and the undersigned by reason of this document and which has to be submitted to a court of justice, shall be brought before any court of competent jurisdiction solely within the sixth or seventh judicial district waiving for this purpose any other proper venue.

8. **WAIVER:** The undersigned hereby individually and collectively waive all the defenses, right privileges and/or benefits that we have under Articles 2077, 2080 and 2081 of the Civil Code of the Philippines, and we hereby give our consent required by Article 2079 of the said Code for the renewals extensions of the said bond. Each and everyone of the undersigned, jointly and severally, by this instrument, grants a special power of Attorney in favor of all of any of the other undersigned, jointly and severally so that any of us may represent all the others in all transactions related to the said bond, its renewals, extensions, substitutions, or any other agreements in connection with this Indemnity Agreement; without the necessity of the knowledge or consent of the other undersigned who hereby accept as valid each and every act done or executed by any of the attorney-in-fact, by virtue of this special power of attorney.

9. **MATURITY OF THE OBLIGATION UNDER THIS BOND:** Said indemnity shall be paid to the Company as soon as it had become liable for the payment of any amount, under the above mentioned bond, whether or not it shall have paid such sum or sums of money, or any part thereof.

MARINDUQUE STATE COLLEGE
Tanza, Boac, Marinduque

COST ESTIMATE PER UNIFORM SECURITY GUARD
BREAKDOWN OF BID FOR THE PROJECT

SERVICES OF A LICENSED SECURITY AGENCY TO BE POSTED / ASSIGNED
IN THE FOUR (4) msc Campuses

BASED ON 8 HRS / DAY ; 7 DAYS A WEEK

A Amount directly due to guards/month

Basic Pay per Month	5,696.50
Night Differential	189.88
13th Month Pay	441.11
5 days Incentive Leave	72.51
Uniform Allowance	100.00
Subtotal	6,500.00

B Amount due to government in favor of the guards

Retirement Pay	326.30
Social Security Premium	363.30
Medicare	62.50
State Insurance Fund	10.00
Pag-Ibig Fund	100.00
Subtotal	862.10

C Total Amount due to guards and government (A+B) **7,362.10**

D Administrative Overhead & Profit Margin **1,551.69**

E Total Rate per guard per month (C+D) **8,913.79**

F VAT **186.20**

G Total contract price per guard per month (E+F) **9,100.00**

TITAN SECURITY AGENCY, INC.

RUDY H. TAN

President / General Manager

Handwritten mark
9/30

PROPOSAL FORM

PROJECT: SERVICES OF A LICENSED SECURITY AGENCY TO BE POSTED/ASSIGNED IN THE FOUR (4) MSC CAMPUSES
LOCATION: Boac Campus, Sta. Cruz Campus, Torrijos Campus, and Gasan Campus
OWNER: Marinduque State College
SUBJECT: PROPOSAL FOR THE SERVICES OF LICENSED SECURITY GUARD
DATE: September 30, 2008

Sir/Madam:

In accordance to your Invitation to Bid dated July 28, 2008 for the Services of a Licensed Security Agency and subject to the pertinent guidelines provided in RA 9184 and its Implementing Rules and Regulations; we proposed to provide Security Services to the four campuses of Marinduque State College of the following prices in Philippine currency.

Total No. of Security Guards: Nineteen (19)

Total No. of Days Rendered per Week: Seven (7) days per week

LUMP SUM BID: One Million Thirty Seven Thousand Four Hundred Pesos
(for 6 month period) (amount in words)

Php 1,037,400.00
(in pesos)

We certify that we/I visited the site/location and familiarized ourselves on the local condition, facilities and problems and have been taken all these into consideration and contingencies in the preparation of the bid.

We will commence the contract 15 days upon receipt of the Notice to Proceed and signing of the contract.

Budy H. Tan

Print Name & Signature

President & Gen. Manager

Position

Titan Security Agency, Inc.

Company

9/30



N.S.D. DETECTIVE & SECURITY SERVICES, INC.
Secrecy is our Discipline, Security is our Expertise, Service is our Pride
160-B Katipunan Avenue, St. Ignatius Village, Quezon City 111
Tel. No. 911-8154 / Fax. No. 911-8176

02 October 2008

DR. ROMULO H. MALVAR, Ph.D.

President

Marinduque State College

Tanza, Boac, Marinduque

THRU: PBAC CHAIRMAN

Dear Sir / Madam,

By the authority bestowed upon me by the Board of NSDDSSI under Board Resolution No. 018 empowered me *"to execute and perform any and all acts necessary and/or represent NSDDSSI in the bidding of MSC as fully and effectively as corporation might do if personally present with full power of substitution and revocation... and shall lawfully do or cause to be done by virtue hereof."* (Pls. see attached)

In behalf of the NSDDSSI Management, we would like to submit our formal motion to reconsider our bid in the recently concluded bidding of MSC for your security services. The NSDDSSI was declared "FAILED" in the bidding due to non-submission of Bid Bond under ITB third to the last sentence – *"all proposals must be accompanied by bid bond..."*

We therefore manifest against the decision of the BAC for the following items and for the following reasons:

1. Under ITR second to the last sentence – *"the appearance of any representative for the respective bidder in the prequalification of documents are required, for any clarification of the submitted document to the Bids and Awards Committee."*

It is very clear that representative from bidders are required to attend as mandated under ITR issued by the BAC, reason why the NSDDSSI Management attended such. Attendance sheet given by the BAC as proof of our attending the event. For this instance as GPPB Ruling any bidder absent during any stages of the bidding should be declared - FAILURE. However, this was not taken in to consideration and the other bidder still attended the Bidding.

2. Under ITR third to the last sentence – *"all proposals must be accompanied by bid bond in the form of cash, certified check, manager's check, bank draft issued by*

the commercial bank at 1% of the budget for the contract to bid, if bid bond is in the form of bank guarantee 1.5%, if surety bond 2.5%."

It was noted during the prequalification that the Approved Budget Contract (ABC) was not yet established. Upon inquiry of NSDDSSI during the prequalification, verbally it was disclosed at P9,545.00 times the required manpower of 19 security guards. However, this was not put into a formal requirement to be included in the bidding since no Bid Bulletin was formally issued by the BAC for all bidders as mandated under GPPB Ruling. Leaving the same item questionable and yet we are declared – FAILED.

3. One of the BAC Member stated that during the prequalification process when only one (1) bidder pass the prequalification and remain sole bidder, thereby be declared as RESPONSIVE BIDDER.

This is however, against the ruling of GPPB. Under GPPB all bidding process should be done publicly with the other bidder to determine the RESPONSIVE BIDDER. The absence and presence of document should be the priority and thereby the attendance of the bidders. No bidder should join any bidding stages without any representative to witness the opening of the bids.

4. Lastly, the Bid Price given by the other bidder is against the Labor Law. The Titan Security Agency bid for P9,100.00 per 8-hours per guard for monthly basis. Under their submitted cost distribution, it was declared that the Average Pay for Guard or the gross pay is something like P6,500.00 per guard. Based on the Wage Order No. RB IV-8-04 of Regional Wage Board the **daily wage** (DW) for this Region is P235.00 per 8-hours totaling to P8,888.33 (DW) not to include the amount to government in favor of guard and Agency Fee and VAT. (Pls. see attached)

Consequently, under The 2003 Revised Rules and Regulation Implementing Republic Act No. 5487 As Amended Rule XVII Section 7 paragraph:

a. When a falsified license is officially submitted by the private security agency to its prospective client in bidding or contracting for security services. (NSDDSSI vs, Jet Squad, Bidding for security services year 2006 of Filinvest II – won due to fake license)

c. When the private security agency or company security force has been found to be violating the minimum wage rate fix by law that should be granted to their private security/company guards. (NSDDSSI vs. Nationwide Security, Bidding for security services year 2008 for Pasig River Rehabilitation Commission – won due to underbid of Nationwide by not following the legal wage and further declared "FAILURE" by the IABAC)

g. When a private security agency has been found to have engage in cut-throat security service with its client or a price lower than the standard minimum wage for security services adopted by PADPAO with the concurrence of the Chief, PNP. A penalty shall be imposed..." (NSDDSSI vs. Right 8, Case cut-throat service at FTI won by Right 8)

By these issues, we further request as part of public document a abstract copy of submitted bid price and distribution of cost of the other bidder for it is our obligation as the incumbent security service provider to look into the welfare of our people/guards assigned at your school premises. For if the Titan Agency who shall take-over the security, the wages of our people will be lowered for the Titan Agency declared to absorb our people who are loyal to the Agency and to the client, MSC.

With this juncture, may we ask your understanding with the law especially the Government Procurement Policy Board (GPPB) that governs all government biddings.

Thank you very much and more power.

Respectfully yours,


ADOLFO C. DAQUIOAG, CSP
Authorized Representative

In the special meeting of the Board of Directors of **N.S.D. DETECTIVE & SECURITY SERVICES, INC.**, on September 27, 2008 at 160 Katipunan Avenue, St. Ignatius Village, Quezon City, the following resolution was passed and ratified, to wit:

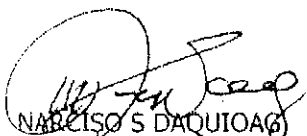
BOARD RESOLUTION No. 018


WHEREAS, the corporate have joined the bidding for security services for the year 2008 of Marinduque State College on the 30th of September 2008.


WHEREAS, in furtherance of its corporate business operation, the corporation needs to authorize at least two officials of its corporation to act as representative and authorized signatories and the other as alternative co-signers in all bidding procedures.

Now, therefore, RESOLVED, as it is hereby resolved that the corporate has made, constituted and appointed ADOLFO C. DAQUIOAG true and lawful attorney, for it and its name, place and stead, to do, execute and perform any and all acts necessary and/or represent NSD Detective & Security Services, Inc. in the bidding of Marinduque State College as fully and effectively as corporation might do if personally present with full power of substitution and revocation and hereby confirming all that said representative shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the Board of Directors set their hands on this 30th day of September, 2008 at Boac, Marinduque, Philippines.


NARCISO S DAQUIOAG
Chairman
CTC No. 07641047


GILBERT L DAQUIOAG
Director
CTC No. 07641048


GAYLE D ROBLES
Director
CTC No. 16288085

Issued at Quezon City
Issued on Jan. 8, 2008
+2008

Issued at Quezon City
Issued on Jan. 8, 2008

Issued at Quezon City
Issued on Jan. 11,

Attested by:


Corporate Secretary

SUBSCRIBED AND SWORN to before me on this 30th day of September 2008 in Boac, Marinduque, Philippines.

Doc. No. _____
Page No. _____
Book No. _____
Series of 2008


ALFREDO L. DE LOMA

PUBLIC

NOT. SEC. III, 2004

REG. NO. 716252 / 07-23-2004



PHILIPPINE ASSOCIATION OF DETECTIVE AND PROTECTIVE AGENCY OPERATORS (PADPAO), INC.

2nd Floor, CSG Building, Camp Crame, Quezon City
 Tel. Nos.: 722-40-02 / 414-47-24
 Telefax Nos.: 416-42-68 / 722-40-03

PADPAO STANDARD COST DISTRIBUTION PER MONTH
REGION IV-B MIMAROPA
 Wage Order No. RB IV-B-04
 Occidental and Oriental Mindoro, Marinduque, Romblon and Palawan
 Effective June 19, 2008

Days worked per week		7 days
No. of days/year		392.50 *
		8 hrs work/day
Amount Directly to Guard		
New Daily Wage (DW)	P	<u>235.00</u>
Ave. Pay/Month (DW x no. of days per yr/12)	P	7,686.46
Night Differential Pay (Ave Pay/Mo x 10% x 1/3)		256.22
13th Month Pay (DW X 365/12/12)		595.00
5 days incentive Pay (DW x 5/12)		97.92
Uniform allowance (R.A. 5487)		100.00
COLA RB IV-B-04 (P5.00 x 365/12)	P	<u>152.08</u>
		8,888.33
Amount to Gov't in Favor of Guard		
Retirement Benefit (R.A. 7841)	P	440.63
SSS Premium		600.70
Philhealth Contribution		87.50
State Insurance Fund		10.00
Pag-ibig Fund		100.00
		<u>1,238.83</u>
A. TOTAL AMOUNT TO GUARD & GOV'T	P	10,127.16
B. AGENCY FEE		
Administrative Overhead and Margin		2,340.04
C. VALUE ADDED TAX (Agency Fee x 12% VAT - RMC -039-20-07)		<u>280.80</u>
MINIMUM CONTRACT RATE FOR 8 HRS	P	12,748.00
MINIMUM CONTRACT RATE FOR 12 HRS. (Min. contract rate for 8 hrs x 1.5)	P	19,122.00

- Note*
1. New PADPAO Rate in accordance to latest wage adjustment effective on date stated above
 2. Agency Fee (Administrative Overhead and Margin) covers operation costs such as taxes and licenses (local and national), supervision, training, insurances, and other incidental expenses relative to security guarding to include return of investments and margin of profit.
 3. Withholding Tax Computation are as follows: (Agency fee x applicable rate)
 - a) For Non-Govt Account - 2% Expatriate withholding tax (Agency fee x 2%)
 - b) For Govt Account - 6% Creditable withholding tax (Agency Fee x 6%)
- * New Formulae on the Computation of the Equivalent Monthly Minimum Wage Rates based on Memo of NWPC (National Wages and Productivity Commission) dtd Sept. 20, 2007.

COMMITTEE ON PADPAO RATE COMPUTATION

Susan S. Gervasio
SUSAN S. GERVASIO
 Member

NCEL E. BONGAT
NCEL E. BONGAT
 Member

Ramon D. Bergado
RAMON D. BERGADO
 President

Cesar B. Poe
CESAR B. POE
 Member

Antonio V. Maniwang
ANTONIO V. MANIWANG
 Member

Tomás R. Garcia
TOMÁS R. GARCÍA
 Member

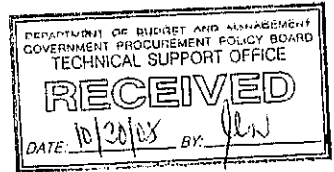


Republic of the Philippines
MARINDUQUE STATE COLLEGE
 Tanza, Boac, Marinduque

Bids and Awards Committee

October 15, 2008

Dir. RUBY U. ALVAREZ
 Director
 Government Procurement & Policy Board
 Unit 2506, Raffles Corporate Center,
 Emerald Avenue, Ortigas Center,
 Pasig City



Dear Dir. Alvarez:

This is to respectfully seek advice and enlightenment on the process undertaken by the Bids and Awards Committee of the College for the procurement of services of a licensed security agency.

1. On September 5, 2008, the Bids and Awards Committee convened for the combined pre-bid conference and pre-qualification of the two bidders who submitted their letters of intent and eligibility requirements: NSD Detective and Security Agency who was represented by its General Manager, and Titan Security Agency, Inc. who was unrepresented. Upon determining the completeness and validity of all the documents submitted, both agencies were declared eligible to participate in the bidding.
2. Among the concerns raised and clarified by the NSD Security during the said activity were the following:
 - a. Number of Guards to be detailed in the different campuses of the College.
 - b. Approved Budget for the Contract
 - c. Duration of the Contract
 - d. Schedule of the purchase of bid forms
3. On September 30, 2008, the date of the opening of bid, NSD failed to enclose bid bond which, pursuant to Section 27 of RA 9184, rendered said agency disqualified for the bidding. The proposal of Titan Security was then accepted and opened, as it qualified and complied with the requirements of the bidding.
4. Immediately two days after, the BAC received a motion for reconsideration from the NSD Detective and Security Agency. On a special meeting called for the purpose, the BAC stands on the following:

NSD's Complaints	BAC's Opinion
<p>a. Under ITR second to the last sentence – <i>“the appearance of any representative for the respective bidder in the prequalification of documents are required, for any clarification of the submitted documents to the Bids and Awards Committee.”</i></p> <p>It is very clear that representative from bidders are required to attend as mandated under ITR issued by the BAC, reason why the NSDDSSI Management attended such. Attendance sheet given by the BAC as proof</p>	<p>It was the BAC who called for the combined pre-qualification and pre-bid conference wherein bidders are requested to come should they have any comments/clarification regarding the project to be bid.</p> <p>Section 22.2 of RA 9184 states that <i>“the pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. However, attendance of bidders shall not be mandatory.”</i> Therefore, Titan's</p>

<p>of our attending the event. For this instance as GPPB Ruling any bidder absent during any stages of the bidding should be declared FAILURE. However, this was not taken in to consideration and the other bidder still attended the Bidding.</p>	<p>absence during the said activity could not be a ground for disqualification.</p>
<p>b. Under ITR third to the last sentence – <i>“all proposals must be accompanied by bid bond in the form of cash, certified check, manager’s check, bank draft issued the commercial bank at 1% of the budget for the contract to be bid, if bid bond is in the form of bank guarantee 1.5%, if surety bond 2.5%.”</i></p> <p>It was noted during the prequalification that the Approved Budget Contract (ABC) was not yet established. Upon inquiry of NSDDSSI during the prequalification, verbally it was disclosed at P9,545.00 times the required manpower of 19 security guards. However, this was not put into a formal requirement to be included in the bidding since no Bid Bulletin was formally issued by the BAC for all bidders as mandated under GPPB Ruling. Leaving the same item questionable and yet we are declared – FAILED.</p>	<p>Supplemental Bid Bulletin was not issued by the BAC on the presumption that the bidder who was present during the pre-qualification/pre-bid conference had already been clarified on the approved budget for the contract, number of guards, and duration of the contract. The fact that the ABC was disclosed; the amount of bid bond was impliedly established contrary to what NSD claims. And the other bidder had no question though they were not present during the said activity.</p> <p>Moreover, NSD was not declared failed but DISQUALIFIED for failure to submit bid bond.</p> <p>Section 22.5.1 of RA 9184 also states that <i>“Requests for clarification(s) on any part of the bidding documents or for an interpretation must be in writing and submitted to the RAC of the procuring entity concerned at least (10) calendar days before the deadline set for the submission and receipt of bids. The RAC shall respond to the said request by issuing a Supplemental/Bid Bulletin, duly signed by the BAC Chairman, to be made available to all those who have properly secured the bidding documents from the procuring entity, at least seven (7) calendar days before the deadline for the submission and receipt of bids. It shall be the responsibility of all those who have properly secured the bidding documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC.”</i></p>
<p>c. The statement of one of the BAC members that a sole bidder, who was absent during the pre-qualification, was even declared a responsive bidder.</p>	<p>Section 36 of RA 9184 provides that <i>“A single calculated/rated and responsive bid shall be considered for award if it falls under any of the following circumstances:</i></p> <p><i>A. If after advertisement, only one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR-A, and it meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements.”</i></p>
<p>d. The Bid Price given by the other bidder is against the Labor Law. The Titan Security Agency bid for P9,100.00 per 8-hours per guard for monthly basis. Under their submitted cost distribution, it was declared that the Average Pay for Guard or the gross</p>	<p>The College’s approved budget for the contract is P9,545.00 per guard for the 19 guards who shall serve for a six-month period in the four campuses of the College. It was, thus, expected that bidders will offer amount lower than the agency’s approved</p>

<p>pay is something like P6,500.00 per guard. Based on the Wage Order No. RB IV-8-04 of Regional Wage Board the daily wage (DW) for this Region is P235.00 per 8-hours totaling to P8,888.33 (DW) not to include the amount to government in favor of guard and Agency Fee and VAT.</p>	<p>budget.</p>
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At the moment the BAC has not yet decided on the bidding. Others concerns/queries that the Committee wishes to raise are:

1. Is it possible to declare the bidding failure? On what ground?
2. What is the minimum duration of the contract for the services of a security agency?
3. What is the basis for the computation of bid bond for the bidding on security services?
Is it the Approved Budget for the Contract or the Bidder's Bid Offer?

Copies of pertinent bid documents are attached for your ready reference. We hope that these matters merit your kind attention and immediate action.

Thank you very much.

Very truly yours,

Proserfina M. Mabiog
PROSERFINA M. MABI OG, MPA
 Chairman, Bids and Awards Committee

Encl:

1. Invitation to Prequalify and to Bid
2. Minutes of the Pre-qualification & Opening of Bid
3. Tilan's Bid Proposal
4. NSD's Motion for Reconsideration