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NPM No. 46-2009

25 August 2009

ATTY. ETHEL DEMAISIP-SAMSON
DEFENSOR, TEODOSIO, DAQUILANEA, VENTILACION,
AVERIA & ASSOCIATES LAW OFFICES
Javelosa Compound, Locsin Subdivision
Arguelles Extension, Jaro, Iloilo City

Re: Amount of Bid Fees

Dear Atty. Samson:

We respond to your letter dated 29 July 2009, which was received by our office on 19 August 2009, seeking guidance on the determination of the price to be paid for bidding documents, in relation to the bidding being conducted by the Bids and Awards Committee of Samar State University (SSU-BAC).

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 how to conduct its bidding and related activities pertinent thereto.

Further, 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, competition, equity, efficiency, and economy in the procurement process that it carries out for the procuring entity.

In view of the foregoing, and considering that the circular/guidelines on the amount of bid fees has yet to be issued by the GPPB, we cannot dictate to the SSU-BAC how they should compute the same. Nonetheless, we opine that the amount to be

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)*

required by the BAC should be reasonable and duly consider the procurement principles espoused above.

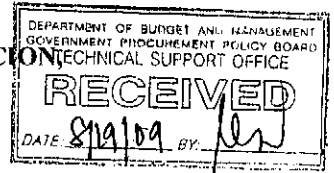
We trust that this sufficiently addresses your concern.

Very truly yours,

Ruby U. Alvarez
RUBY U. ALVAREZ
Executive Director III



**DEFENSOR, TEODOSIO, DAQUILANA, VENTILACION,
AVERIA and ASSOCIATES LAW OFFICES**
Javelosa Compound, Locsin Subdivision,
Arguelles Extension, Jaro, Iloilo City
Tel. No. 320-29-77/ Fax No.509-24-06



July 29, 2009

The Head
Monitoring Support Group
Government Procurement
Policy Board – Technical Support Office
Unit 2506, Raffles Corporate Center
F. Ortigas Jr. Road, Ortigas Center
1106 Pasig City

*Enunciado,
Pks. handle. Lets assure
them that circular on amount
of bid fees will be issued in
the future. Sign in my behalf
8/11/09*

Dear Sir/Madam;


I write in behalf of my client, Prince Valiant Int'l. Corporation.

On June 22, 2009, the Samar State University (SSU) published an invitation to Apply for Eligibility and to Bid for the Purchase of Mechatronics Equipment-Pneumatic Training System for the College of Engineering with an Approved Budget for the Contract (ABC) of Four Million Twenty Thousand Pesos (Php 4,020,000.00) and a Forty Thousand Two Hundred Pesos (Php 40,200.00) price for the bid documents.

[Handwritten signature]

My client, Prince Valiant Int'l Corporation, is interested in participating in the said bidding process but is anxious because of the price of the bidding documents which is equivalent to one per cent (1%) of the Approved Budget Contract. On July 15, 2009 in behalf of my client, I wrote a letter to the BAC Chairman of Samar State University inquiring as to the legal basis for the imposed fee on the bid documents. A letter reply was received on July 20, 2009 dated July 16, 2009 stating that the non-refundable fee imposed on the purchase of bid documents is One Per Cent (1%) of the ABC which is patterned after the fees requirements laid down in Rules V, VI and VII of the IRR-A of RA 9184, and DBM Budget Circular 2004-5A date October 7, 2005 which, upon careful review of the said Rules and Circular, the said rules did not mention any standard for the imposition of fees for the bid documents. Furthermore, the DBM Circular that was stated in the reply letter from the SSU-BAC refers to the Guidelines on the Grant of Honoraria to Government Personnel involved in Government Procurement which in itself is explanatory, and which does not at all include the standard for the imposition of fees for bidding documents.

In this connection, I am writing to you in behalf of my client, Prince Valiant Int'l. Corporation represented by its president Mr. Demetrio M. Estellero, Jr. expressing our concerns about the fee for the purchase of bid documents which to us may be excessive considering that the purpose of the said fee is for the cost of preparation of the bidding documents only. The excessive and non-refundable costs of bidding documents may possibly lead to speculations that the institution or agency concerned may have a hidden intent of discouraging legitimate bidders to participate in the public bidding, in favor of a few, and which would be inimical to the basic principles of R.A. 9184. Furthermore, may we

Reference Number 910001 Procuring Entity SAMAR STATE UNIVERSITY Title IAEB-
 PURCHASE OF MECHATRONICS EQUIPMENT-PNEUMATIC TRAINING SYSTEM FOR
 THE COLLEGE OF ENGINEERING Area of Delivery Samar  Printable Version

Solicitation Number:	SSU-09-06-08	Status	Active
Trade Agreement:	Implementing Rules and Regulations	Associated Components	Order
Procurement Mode:	Public Bidding	Bid Supplements	0
Classification:	Goods	Document Request List	6
Category:	Engineering and Laboratory Testing Equipment	Date Published	22/06/2009
Approved Budget for the Contract:	PHP 4,020,000.00	Last Updated / Time	22/06/2009 12:00 AM
Delivery Period:	6 Month/s		20/07/2009 1:30 PM
Client Agency:			
Contact Person:	Jose S. Labro Vice Pres. for Adm. Affairs/BAC Chairman Catbalogan Catbalogan Samar Philippines 6700 63-55-2512139 63-55-5438394 ssubac01@yahoo.com	Closing Date / Time	
Description			
Republic of the Philippines SAMAR STATE UNIVERSITY BIDS AND AWARDS COMMITTEE Catbalogan, Samar Telephone Numbers: (055)-543-8394/(055)-251-2139 Website: www.ssu.edu.ph			
INVITATION TO APPLY FOR ELIGIBILITY AND TO BID PURCHASE OF MECHATRONICS EQUIPMENT-PNEUMATIC TRAINING SYSTEM (PHASE 1) FOR THE COLLEGE OF ENGINEERING			

The Samar State University will hold a PRE-BID CONFERENCE open to all interested parties on July 6, 2009 at 1:30 PM at the Mabuhay Conference Hall, 2nd Floor New Administration Building, Samar State University, Catbalogan City.

Bids and eligibility requirements must be delivered to the address below on or before July 20, 2009 at 1:30 PM. All Bids must be accompanied by a Bid security in the form of CASH and in the amount of Forty Thousand Two Hundred Pesos (PHP40,200.00). Late Bids shall not be accepted.

BID OPENING shall be on July 20, 2009 at 2:00 PM at the Mabuhay Conference Hall, 2nd Floor New Administration Building, Samar State University, Catbalogan City. Bids will be opened in the presence of the Bidders' representatives who choose to attend at the address below.

The SAMAR STATE UNIVERSITY reserves the right to accept or reject any Bid, to annul the bidding process, and to reject all Bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder or Bidders.

Bids and Awards Committee, (BAC)
Samar State university
Arteche Boulevard, Catbalogan City
Tel. No. (055)251-2086, 251-2139
E-mail Ass:jose@ssu.edu.ph
Fax No. (055)356-1766
dr. Marilyn Cardoso 251-4780

(SGD.) JOSE S. LABRO, Ph. D.
Vice-President for Administrative Affairs
Chairman, BAC

June 9, 2009
Pre-bid Conference

Date	Time	Venue
06/07/2009	1:30 PM	Mabuhay Conference Hall Second Floor New Administration Building Samar State University Catbalogan, Samar

Conforme:



DEMETRIO G. ESTELLERO, JR.
for Prince Valiant Int'l. Corporation

Copy furnished:

Commission on Audit
Catbalogan, Samar

Office of the Ombudsman-Visayas
DA Regional Office No. 7 Compound
M. Velez St., Guadalupe, Cebu City

Government Procurement Policy Board
Unit 2506, Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City 1106



Republic of the Philippines
SAMAR STATE UNIVERSITY
BIDS AND AWARDS COMMITTEE

Catbalogan, Samar.

Telephone Numbers: (055)-543-8394/(055)-251-2139

Website: www.ssu.edu.ph

July 16, 2009

ETHEL D. SANSON

Counsel for Prince Valiant Int'l. Corporation
Defensor *et al* and Associates Law Offices
Javelosa Compound, Locsin Subdivision
Arguelles Extension, Jaro, Iloilo City

Dear Counsel Sanson:

This refers to your letter dated July 6, 2009 in behalf of your client Prince Valiant Int'l. Corporation represented by Mr. Demetrio M. Estellero, Jr. and received by the undersigned on July 15, 2009 inquiring as to the legal basis in imposing the amount of PHP 40,200.00 as non-refundable fee in purchasing the complete set of bidding documents for the purchase by public bidding of Mechatronics – Pneumatic Training System (Phase 1) by Samar State University.

We are pleased to learn of your client's interest to participate in the public bidding of the aforesaid equipment and we wish to assure your client that the preparation, development and conduct of the public bidding for the purchase of the particular equipment are all geared towards attaining competitive bidding as articulated in Republic Act 9184. The price for the complete set of eligibility and bid documents is not intended to discourage legitimate and qualified business entities but rather to dissuade from participating "fly-by-night" and opportunistic suppliers who may buy the bidding documents but would not proceed to submit their bids and instead muddle the bid process.

The non-refundable fee for the eligibility and bidding documents which constitutes 1% of the Approved Budget for the Contract and is patterned after the fee requirement under Rule XVII of RA 9184, covers not only the cost of preparing and developing the bidding documents but also those of the eligibility documents including the fees required for the publication of the invitation to bid and other entitlements allowed by RA 9184 and DBM relative to the procurement project.

As to your query, the price for the eligibility and bid documents was set by the SSU Bid and Awards Committee (BAC) in accordance with Rules V, VI, and VII of the IRR-A of RA 9184, and DBM Budget Circular 2004-5A dated October 7, 2005.