

**NPM No. 51-2009**

14 October 2009

**ISAIAS P. BONGAR JR.**

*Chairman, Bids and Awards Committee*

**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM**

4<sup>th</sup> Floor, Administration Building, MWSS Complex,  
489 Katipunan Avenue, Balara,  
Quezon City 1105

Dear **Mr. Bongar**:

We respond to your letter dated 17 August 2009 received by our office on 25 August 2009 requesting for clarification on certain issues relative to the bidding conducted by the Metropolitan Waterworks and Sewerage System (MWSS) for security services. In your letter you raised the following concerns:

- 1) *Whether a certification by the bidder that it "shall abide with the existing labor laws, standards, rules and regulations of the Department of Labor and Employment (DOLE)" and that it shall "accept sanctions that may be imposed" in case of violation of any rules and regulations prescribed by DOLE substantially complies with the legal requirement by MWSS of a certification that the bidder has complied with all pertinent labor laws.*

At the outset, we would like to reiterate that determination of eligibility of a bidder depends on the completeness of the bidder's eligibility documents against those required by the procuring entity. If MWSS as the procuring entity required a certification that the prospective bidder **has complied** with all pertinent labor laws, then the bidder must accordingly issue such instrument, and not merely state that it **shall comply** with the abovementioned laws. If, however, the procuring entity attached and/or prescribed the use of the sworn statement as appears in the Sample Forms issued by the GPPB, it must dutifully accept the certificate submitted by the bidder based thereon.

- 2) *A certification issued by National Labor Relations Commission (NLRC) disclosed that the bidder has no pending case with the NCR Regional Arbitration Branch. Upon further investigation, however, it was discovered that the bidder has a pending appeal with the NLRC Commission Proper.*
  - a. *Whether MWSS can proceed with the award of the security services despite the existence of the pending appeal.*

b. *What will be the effect of an adverse decision rendered against the bidder in case it is granted the notice of award?*

Please be advised that as a general policy, imposition of additional eligibility or technical documents is discouraged because it increases transaction cost and reduces competition. Corollary, the requirement that a clearance or certificate from an appropriate government authority that the bidder has no pending administrative or labor case filed against it is runs contrary to the basic tenet that every person is presumed innocent until proven guilty. In lieu of such additional requirements, the procuring entity may, during post-qualification, verify, validate and ascertain the statements whether the bidder –

- (i) Complies with the minimum wage mandated by law;
- (ii) Regularly remits mandated premiums to SSS, PhilHealth, and Pag-IBIG; or
- (iii) Has been finally adjudged by a court of competent jurisdiction to have violated any labor law or social legislation.<sup>1</sup>

In other words, the procuring entity may proceed with the award of contract to a bidder pending appeal subject, among others, to the immediately preceding conditions. A decision rendered against the bidder shall not affect the award provided that the adverse resolution was issued after the vested rights of the bidder to the contract have been conferred, and, provided, however, that the said offense committed by the bidder is not connected with the awarded contract.

3) *Whether the revocation of the bidder's Securities and Exchange Commission (SEC) registration in 2004 for non-compliance with the reportorial requirement is a ground not to award the contract for security services. It was further noted that the bidder is presently registered as a single proprietor with a Department of Trade and Industry (DTI) Registration valid until 2013.*

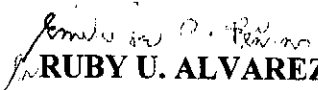
The determination of eligibility of the bidder shall be based on the submission of the documents specified under R.A. 9184 and its IRR-A using a non-discretionary "pass/fail" criterion. If a bidder submits the required documents, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed". Hence, submission by the bidder of a DTI Registration in lieu of an SEC Certificate shall be tantamount to substantial compliance for the specific requirement notwithstanding the revocation of its previous certificate of incorporation, unless the doctrine of piercing the veil of corporate fiction may be availed of under the circumstances.

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<sup>1</sup> GPPB Circular No. 01-2008, dated 7 March 2008

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

Very truly yours,

  
**RUBY U. ALVAREZ**  
*Executive Director III*

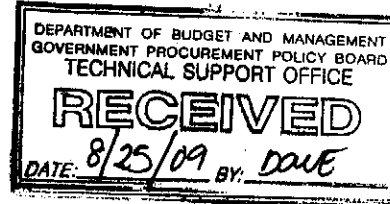


Republic of the Philippines  
**METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM**

*Emmie*  
*Pls. handle. Sign in*  
*my behalf.*  
*8/26/09*

August 17, 2009

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



Dear Director Alvarez,

This is to respectfully request for clarification on certain issues relative to the recent bidding conducted by our office for security services.

During the process of post-qualification of the lowest calculated bidder we have noted the following:

A. A certification under oath from the bidder stating that:

"2. That our firm/company shall abide with the existing labor laws and standards, rules and regulations of the Department of labor and Employment (DOLE) in connection with the implementation of the project;

3. That if our Finance/Company violates any rules and regulations as prescribed by DOLE, I/We will accept sanctions that may be imposed on our firm."

- The requirement (legal document) is to submit a certification that the bidder has complied with all pertinent labor laws.
- Certification from the NLRC disclosed that it has no pending case with the NCR Regional Arbitration Branch. However, further investigation disclosed that it has pending appealed case with the Commission Proper.

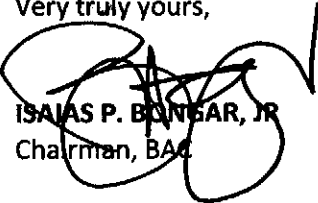
B. It was likewise discovered that the bidder's previous certificate of registration with the Securities and Exchange Commission (SEC) was revoked in 2004 for non compliance with reportorial requirement. Be it noted however that as of the date of bidding it is a single proprietor with a Department of Trade and Industry (DTI) Business Registration valid until 2013.

In view thereof, we pose the following queries:

- a. Can we consider the submitted certification (letter A above) in substantive compliance with the requirement that it has complied with all pertinent labor laws?
- b. Can we proceed with the award of the security services in the light of the appealed pending case?
- c. On the assumption that the decision on the appealed case is adverse to it what will be its effect on the notice of award?
- d. With respect to the previous revocation of the SEC Registration, is it a ground not to award the contract for security services?

Trusting for your response on the herein request.

Very truly yours,



ISAIAS P. BONBAR, JR  
Chairman, BAC