



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

NPM No. 57-2009

16 October 2009

MARLYN A. FUERZAS

OIC-General Manager

ALLIED TRADE RESOURCES

105 Mitra Bldg., San Pedro St., Davao City

Re : Submitted vs. Calculated Bid Prices

Dear Ms. Fuerzas:

We respond to your letter dated 14 August 2009 requesting for clarification on the seeming inconsistency between Section 37 of Republic Act 9184 (R.A. 9184) and its corresponding Implementing Rules and Regulations Part A (IRR-A) provision.

As per your representation, you participated in one of the biddings, wherein you submitted a lower but erroneously summed-up bid. Subsequently, you were declared as the Lowest Calculated Responsive Bid (LCRB) based on the "corrected bid". The procuring entity thereafter awarded the contract in your favor using your submitted bid in accordance with Section 37.1 of the IRR-A.

The main issue is whether the contract price award should be based on the calculated, i.e. corrected, bid price, or the submitted bid price of the bidder.

Section 32.2 of the IRR-A provides that for the procurement of goods and infrastructure projects, the Lowest Calculated Bid shall be determined using two (2) steps, viz:

- (1) the detailed evaluation of the financial component of the bids to establish the correct calculated prices of the bids; and*
- (2) the ranking of the total bid prices as so calculated from lowest to the highest, with the lowest bid to be identified as the Lowest Calculated Bid (LCB).*

Once the BAC has determined the LCB, it shall then proceed with post-qualification. If the LCB passes all the criteria therefor, the BAC shall declare said bid as the Lowest Calculated Responsive Bid (LCRB) and recommend the same for award. The Head of the Procuring Entity (HOPE) or his duly authorized representative shall

then approve or disapprove the recommendation. In case of approval, the HOPE or his duly authorized representative shall issue the Notice of Award to the LCRB.

For purposes of contract award, Section 37.1 of IRR-A provides, thus:


“Award of contract shall be made to the bidder with the Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid, as the case may be, at its submitted bid price or its calculated bid price, whichever is lower. xx” (Emphasis provided)

A reading of the above provision, taken together with Section 37 of R.A. 9184, leads us to the conclusion that the contract should be awarded to the bidder with the Lowest Calculated Responsive Bid at the amount determined by the BAC to be whichever is lower between the actual submitted bid price, and the evaluated, calculated bid price. Hence, in case of discrepancy between the two amounts, the lower shall prevail.

Corrollarily, therefore, it is submitted that Section 37.1 of the IRR-A is, in keeping, and, consistent, with Section 37 of R.A. 9184 inasmuch as the contract is still awarded to the bidder whose bid has been determined to be the LCRB.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,


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



TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

16 October 2009

MARLYN A. FUERZAS

OIC-General Manager

ALLIED TRADE RESOURCES

105 Mitra Bldg., San Pedro St., Davao City

Re : Inconsistency between Section 37 of R.A. 9184 and its IRR-A

Dear Ms. Fuerzas:

We respond to your letter dated 14 August 2009 requesting for clarification on the seeming inconsistency between Section 37 of Republic Act 9184 (R.A. 9184) and its Implementing Rules and Regulation Part A (IRR-A).

As per your representation, you participated in one of the biddings, wherein you submitted a lower but erroneously summed-up bid. Subsequently, you were declared as the Lowest Calculated Responsive Bid (LCRB) based on the "corrected bid". The procuring entity thereafter awarded the contract in your favor using your submitted bid in accordance with Section 37.1 of the IRR-A.

The main issue is whether the total contract price should be based on the LCRB as provided in Section 37 of R.A. 9184, or on the submitted bid price as indicated in Section 37.1 of the IRR-A.

For the procurement of goods and infrastructure projects, the Lowest Calculated Bid is determined using two (2) steps: (1) the detailed evaluation of the financial component of the bids to establish the correct calculated prices of the bids, and (2) the ranking of the total bid prices as so calculated from lowest to the highest, with the lowest bid to be identified as the Lowest Calculated Bid (LCB).¹ If the BAC determines that the LCB passes all the criteria for post-qualification, it shall declare said bid as the LCRB. The Head of the Procuring Entity (HOPE) or his duly authorized representative shall then approve or disapprove the recommendation. In case of approval, the HOPE or his duly authorized representative shall issue the Notice of Award to the LCRB.² Award of contract shall be based on the bid price as submitted by the bidder or its calculated bid price, whichever is lower.³

The submitted or calculated bid price refers only to the contract price while the LCRB pertains to the winning bid. In other words, the LCRB shall be the prevailing bid proposal which includes the technical specifications and financial proposal submitted,

¹ Section 32.2 of IRR-A of R.A. 9184

² Section 37 of R.A. 9184.

³ Section 37.1, of IRR-A.



TEC Ma'am Eunnie,
10/16
These are draft replies
re: Allied Trade query. I made
some revisions on the original
made by Win. for review ps.
Thank you.
Hlycee

07 October 2009

MARLYN A. FUERZAS
OIC-General Manager
ALLIED TRADE RESOURCES
105 Mitra Bldg., San Pedro St., Davao City

Re: Request for Clarification, Section 37, RA 9184

Dear Ms. Fuerzas:

We respond to your letter dated 14 August 2009 requesting for clarification in the ^{seemingly} apparent inconsistency between Section 37 of Republic Act 9184 (R.A. 9184) and the same section as elaborated in the Implementing Rules and Regulation Part A (IRR-A) (4th edition, September 2007).

Based on your letter, you have participated in one of the biddings, wherein you submitted a lower but erroneously summed-up bid. Being also the *Lowest Calculated Responsive Bid* (which is the corrected bid), in which the procuring entity issued to you the Award but indicating thereon that the submitted bid is in accordance with subsection 37.1 of the ~~Implementing Rules and Regulation of the Republic Act 9184~~. IRR of RA 9184

Section 37 of Republic Act 9184 and as approved by PGMA January 2003

“Section 37. Notice and Execution of Award – Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the *Lowest Calculated Responsive Bid or Highest Rated Responsive Bid*, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

Section 37 in the IRR-A

“Section 37. Notice and Execution of Award”

37.1 Award of contract shall be made to the bidder with the *Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid*, as the case may be, at its submitted bid price or its calculated bid price, whichever is lower. In the case of quality-based...”

37.2. Contract Award

37.2.1. Within a period not exceeding **seven (7) calendar days** from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation. **However, for infrastructure projects with an ABC of fifty (50) million and below, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation within four (4) calendar days.** In case of approval, the head of the procuring entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. In the case of GOCCs..."

→ No discussion provided. - please explain the basis for the conclusion?

Base on the foregoing and the facts you had given there is no conflict between the provisions of the ^{RA 9184} Republic Act 9184 and its ^{IRR-A} Implementing Rules and Regulation Part A (IRR-A). The submitted bid price is duly considered for purposes of determining the Lowest Calculated bid, then the Lowest Calculated Responsive Bid.

This opinion is being rendered on the basis of the facts and particular circumstances as represented. It may not necessarily be applicable upon a different set of facts or circumstances.

We trust that this clarifies matters. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

RUBY U. ALVAREZ
Executive Director III

*Income,
Pl. handle. Sign
in my behalf. 18/8/21/09*



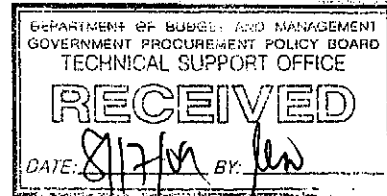
ALLIED TRADE RESOURCES

Philippine Corporation (ALLTRADE)

Unit 105 Mitra Bldg., San Pedro St., Davao City 8000
Telephone/Fax: (082) 300 - 4183/ 227-9739

Aug 14, 2009

Government Procurement Policy Board
Technical Support Office



Subject: Request for Clarification, Section 37, RA 9184

Gentlemen/Ladies:

This is to request clarification in the seeming inconsistency between Section 37 of RA 9184 and the same section as elaborated in the IRR-A (4th edition, September 2007) We are seeking this clarification because in one of the biddings we participated in, we submitted a lower but erroneously summed-up bid. Being also the Lowest Calculated Responsive Bid (the corrected bid), the procuring entity is issuing us the Award but indicating thereon the submitted bid which according to them is in accordance with sub-section 37.1 of the IRR.

Section 37 in RA 9184 as enacted and as approved by PGMA 10 January 2003

"Section 37. Notice and Execution of Award - Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity of his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid."

Section 37 in the IRR-A

"Section 37. Notice and Execution of Award

37.1 Award of Contract shall be made to the bidder with the Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid, as the case maybe, at its submitted bid price or its calculated bid price, whichever is lower, in the case of quality based ..."

37.2 Contract Award

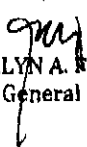
37.2.1 Within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid, and the recommendation of the award, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation. However, for infrastructure projects with an ABC of fifty (50) million and below, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation within four (4) calendar days. In case of approval the head of the procuring entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. In the case of GOCCs. .." (All underscoring ours)

Thus it shows that Section 37 in RA 9184 and Section 37.1 of the IRR appears to be in conflict insofar as to which bid price to consider for award - the Lowest Calculated Responsive Bid or the submitted bid price.

Also in the IRR itself, there is that same inconsistency for award between sub-section 37.1 and sub-section 37.2.1 because the latter considers only the Lowest Calculated Responsive Bid and never the submitted bid.

With all due respects, allow us to anticipate your expedient action on the issue at hand.

Very truly yours,


MARLYN A. RUERZAS
OIC- General Manager