

**NPM No. 58-2007**

3 December 2007

**MR. DANILO G. CHICO**

*President*

**D.G. CHICO TRADING & CONSTRUCTION CORP.**

Room 401 Park Avenue Mansion

Park Avenue, Pasay City

**Re : Waiver of Bidder's Right to File a Temporary Restraining  
Order or Injunction in Court**

Dear Mr. Chico:

We respond to your letter dated 20 March 2006.

Based on your representation, the Bids and Awards Committee (BAC) of Pasay City conducted a competitive bidding for the construction of various school buildings. One of the eligibility requirements to be submitted is a waiver that the bidder will not seek or file a temporary restraining order and/or injunction from the courts should the bidder lose or be disqualified in the bidding. Your company opted not to submit said waiver on the ground that it appears violative of your rights under Republic Act No. 9184 (R. A. 9184). The BAC disqualified your company for non-submission of said waiver, among others. Your company submitted a motion for reconsideration of the decision of the BAC. The BAC denied said motion on the basis of Section 17.7.3 of the Implementing Rules and Regulations Part A (IRR-A) of R. A. 9184. In this regard, you wish to clarify the limitation of said section and the reason for the disqualification.

Section 17.7.3 of the IRR of RA No. 9184 provides:

“The procuring entity shall not assume any responsibility regarding the erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity.”

The bidding documents should state in clear and unambiguous terms the minimum specifications needed in order to meet the requirements of the procuring entity. However, interpretations or conclusions made by the bidder on said specifications and requirements shall be the sole responsibility of the bidder. Thus, bidders are obliged to carefully examine the bidding documents, to make an estimate of the facilities available and needed for the contract to be bid, and to determine and

satisfy itself by such means as it considers necessary as to all matters pertaining to the contract to be bid.

The IRR-A allow the BAC to require additional documentary requirements or specifications where applicable and necessary to complete the information required for the bidders to prepare and submit their bids provided the minimum requirements under the IRR-A shall be complied with. However, the BAC cannot prescribe requirements which would defeat any of the principles of R. A. 9184 and its IRR-A or those contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law.

We opine that the requirement to submit as one of the eligibility documents a waiver of one's right to file a temporary restraining order and/or seek injunction from the courts violates a bidder's constitutional right to due process. It bears stressing that R.A. 9184 already limits an aggrieved bidder's right to seek redress from the courts. Section 58 of R.A. 9184 states that court action may be resorted to only after the protest contemplated in its Article XVII shall have been completed. The procuring entity may not, thus, further limit such right by requiring a waiver as a pre-condition to the bidder's eligibility.

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

Very truly yours,



**ROBY U. ALVAREZ**  
*Executive Director III*

Cc: Atty. Ernestina B. Carbajal  
*Chairperson*  
Bids and Awards Committee  
Pasay City, Manila