

NPM No. 59-2009

04 November 2009

PETER GO CHENG

Sales Manager

JODAR COTTAGE INDUSTRIES

1576 – 1582 E. Remigio St, Sta. Cruz

Manila

Re: Eligibility Requirements/A.O. 227

Sir:

We respond to your letter¹ dated 17 August 2009 soliciting our opinion on the propriety of the action of the Regional Bids and Awards Committee (RBAC) of the National Food Authority Region III Cabanatuan City (NFA III), for allegedly limiting the procurement of polypropylene sacks for *palay* only to the manufacturers thereof.

Based on your representations, as stated in aforesaid letter, the following information were gathered:

1. Jodaar Cottage Industries (“Jodaar”) is one of the bidders for the procurement of the polypropylene sacks by the NFA III.
2. The Invitation to Bid for the said procurement specifically stated that the bidding shall be open to manufacturers, suppliers, and distributors.
3. The Bid Data Sheet (BDS) however, required suppliers and distributors to submit additional eligibility requirements i.e., certified xerox copy of legal, technical, and financial documents establishing the capability of its manufacturer, and proof that the manufacturer has completed a contract equivalent to fifty percent (50%) of the contract to be bid, all in pursuance to Administrative Order 227 (A.O. 227).
4. During the pre-bid conference, the application of the provisions of A.O. 227 requiring the additional requirements was questioned. Exercising its discretion, the RBAC stood pat on its decision to require the same.
5. Jodaar formally filed for reconsideration with the NFA III positing that: (1) a qualified supplier or distributor should only be required to submit eligibility requirements as a bidder, and no longer those of its manufacturer since the latter is not privy to the contract; and 2) preference accorded under Section 2 of A.O. 227 pertains to processed or finished products manufactured out of raw materials grown and produced locally.

¹ With attachments.

Thus, the basic issue is whether or not the RBAC of NFA III may validly require prospective bidders who are either suppliers or distributors, to submit additional eligibility requirements pertaining to their manufacturer/s pursuant to A.O. 227.

At the outset, we would like to remind you that the Government Procurement Policy Board (GPPB) is an administrative body imbued with quasi-legislative or rule-making power² to determine policy directions in the area of public procurement. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process considering that it has no *quasi-judicial*³ functions under Republic Act No. 9184 (R.A. 9184) and its Implementing Rules and Regulations (IRR). Hence, the determination of the legality and/or propriety of the actions and decisions of the BAC is not within the express mandate of this Office.


It is noted, nonetheless, that the BAC, with the assistance of the Technical Working Group, BAC Secretariat and end-user unit, has the prerogative and responsibility to determine pertinent information relative to public procurement, such as the terms, conditions, specifications, including additional requirements it may deem relevant, subject to existing laws and issuances.

Relative thereto, please be informed that the GPPB has already incorporated the guidelines for the application of the domestic preference rule espoused under AO 227, in Section 43, Rule XII of the revised IRR of R.A. 9184. A copy of said IRR may be downloaded from our website at www.gppb.gov.ph.

In any event, please note that bidders are not devoid of legal remedies in case of violation of the provisions of the procurement law by the procuring entities. After the bidder has exhausted the administrative remedies provided under R.A. 9184, *i.e.*, motion for reconsideration and protest, it may, bring its complaint to the appropriate monitoring/investigatory body or oversight agency, or, directly file suit with the courts of competent jurisdiction.

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

² Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from

delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

³ Quasi-judicial is defined as a 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 [1988]).

4 November 2009

PETER GO CHENG
Sales Manager
JODAAR COTTAGE INDUSTRIES
1576 – 1582 E. Remigio St, Sta. Cruz
Manila

*Ma'am Eunice,
for review po. the
soft copy FN: Jodaar. 8.17.2009
is in kizale shared doc po.
Thank you.. -Hyce-*

Sir:

We respond to your letter¹ dated 17 August 2009 soliciting our opinion on the legality of the action of the Regional Bids and Awards Committee (RBAC) of the National Food Authority (NFA) Region III Cabanatuan City, for allegedly limiting the procurement of polypropylene sacks for *palay* only to the manufacturers thereof.

As culled from your letter as well as other documents attached thereto, the relevant factual antecedents are as follows:

1. Jodaar Cottage Industries ("Jodaar") is one of the bidders for the procurement of the polypropylene sacks by the NFA Region III.
2. The Invitation to Bid for the said procurement was published at the Philippine Daily Inquirer on 1 August 2009. It specifically stated that the bidding shall be open to manufacturers, suppliers, and distributors.
3. The Bid Data Sheet (BDS) however, required suppliers and distributors to submit additional eligibility requirements i.e., certified Xerox copy of legal, technical, and financial documents establishing the capability of its manufacturer, and proof that the manufacturer has completed a contract equivalent to fifty percent (50%) of the contract to be bid, all in pursuance to Administrative Order 227 (A.O. 227).
4. During the pre-bid conference, the application of the provisions of A.O. 227 requiring the additional requirements was questioned. It is alleged that resin, which is an oil by-product and the main ingredient in the manufacture of polypropylene sacks is not locally available in the Philippines since it is not an oil producing nation. Thus, the provisions of A.O. 227 should not have been applied in the said procurement. Exercising its discretion, the RBAC eventually denied the argument.
5. In its letter to NFA, Jodaar requested for reconsideration reiterating its position and in addition, claiming that a supplier or distributor who is qualified to offer his bid should only be required to submit eligibility requirements as a bidder, and should not be obligated to submit the

¹ With attachments.

eligibility documents of his manufacturer. The manufacturer is not privy to the contract and in the event that the supplier commits an act in violation to the contract, it shall be the supplier who shall be liable and not the manufacturer. Furthermore, it is maintained that preference accorded under Section 2 of A.O. 227 pertains to processed or finished products manufactured out of raw materials grown and produced locally.

The basic issue therefore, is whether NFA may require submission by the supplier/distributor as prospective bidder, of the eligibility requirements of its manufacturer, pursuant to AO 227

At the outset, we would like to remind you that the Government Procurement Policy Board (GPPB) is an administrative body imbued with quasi-legislative or rule-making power² to determine policy directions in the area of public procurement. It has no jurisdiction to rule over actual controversies with regard to the conduct of the bidding process considering that it has no *quasi-judicial*³ functions under R.A. 9184 and its IRR. Hence, the determination of the legality and/or propriety of the actions and decisions of the BAC is not within the express mandate of this Office.

It bears stressing nonetheless that under the present law, the BAC with the assistance of the TWG, BAC Secretariat and end-user unit, has the prerogative and responsibility to determine pertinent information relative to public procurement, such as the terms, conditions, specifications, including additional requirements it may deem relevant, subject to existing procurement laws and issuances.

Please be informed that the GPPB recognizes the policy of the State as laid down in A.O. 227, and in fact ~~institutionalized and operationalized the provisions thereof in R.A. 9184 more specifically through Section 43 through the Domestic Preference Rule.~~

In any event, please note that bidders are not devoid of legal remedies in case of violation of the provisions of the procurement laws by the procuring entities. After the bidder has exhausted the mechanisms provided by law *i.e.*, motion for reconsideration and protest, it may ^{bring} raise the action to the proper venue, or, it may opt to directly file suit with the courts of competent jurisdiction.

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

² Rule-making power of administrative agencies refers to the power to issue rules and regulations which result from

delegated legislation in the administrative level. (See Agpalo, *Philippine Administrative Law*, 1999 Ed., p.137).

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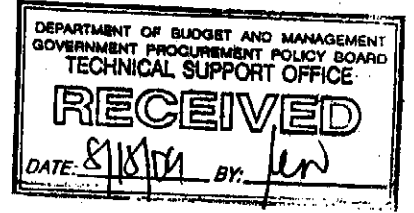
1
FA *Emmie,*

August 17, 2009

ATTY. RUBY U.
Executive Director
Government Procurement
Unit 2506 Raffle
F. Ortigas Jr. Road
Pasig City

*Pls. handle. begin
in my behalf. There's
some history to it. Pls.
see attached docs.*

8/29/09



*to recall a similar query
the part: To whom was the
assigned? 8/21/09*

Dear Director Alv

We would like to respectfully lodge this urgent request for clarification, in relation to the propriety on the part of the Regional Bids and Awards Committee (RBAC) of the National Food Authority (NFA)-Region III, Cabanatuan City in limiting to manufacturers only, the prospective bidders for the supply and delivery of polypropylene sacks for Palay.

While the invitation to bidders published on August 01, 2009 at Philippine Daily Inquirer specifically states that the bidding is open to manufacturers, suppliers and distributors, some additional eligibility requirements under the Bid Data Sheet (BDS), impliedly prohibits the participation of suppliers and distributors in said bidding. (ITB published hereto attached as ANNEX "A").

Reference is particularly made to item 14.1(j) (List of Additional Requirements), a copy of which is herewith attached as ANNEX "B" for your ready reference.

Under the aforementioned additional requirements, a prospective bidder who is a supplier or distributor is required to submit documents pertaining to his manufacturer, allegedly in compliance with the provisions of Administrative Order 227.

Number (3) of Item 14.1(j) requires the supplier/distributor bidder to submit a Certified xerox copy of documents proof such as, Legal, Financial and Technical, establishing the capability of the manufacturer, such as the completed contract of the manufacturer, which is at least fifty percent (50%) of the contract to be bid.

We find this requirements as totally absurd and in violation of the provisions of the government procurement law or R.A. 9184. This matter was raised during the pre-bid conference considering the uniqueness of the supplies to be procured. It must be emphasized that resin, which is an oil by-product, is the main ingredient in the manufacture of polypropylene sacks. Resin, however, is not locally available because the Philippines is not an oil producing nation. The provision of A.O. 227, therefore, should not be applied by the procuring entity. Our argument was eventually denied by the RBAC under the guise of a simple exercise of discretion.

A supplier/distributor who is allowed to bid, should only be required to submit eligibility documents pertaining to him as the bidder, and should not be obligated to submit the eligibility documents of his manufacturer, considering that the latter is not the bidder, and logically, is not subject to the processes of eligibility. Further, the manufacturer is not privy to the contract between the procuring entity and the supplier/distributor in the event that said supplier/bidder is eventually awarded the contract. Under this eventuality, the supplier/distributor who wins in the bidding is solely responsible or liable under the provisions of the contract, and not the manufacturer, who is not even a signatory to said contract.

In view of the denial, we filed a formal request for reconsideration on August 12, 2009, for the benefit of all concerned and to set the matter in its proper perspective. (*Attached hereto as **ANNEX "C"***).

Since the bidding proper will be held on August 24, 2009, we find it imperative for us to seek an urgent clarification from your Office, whether it is proper for the NFA to require supplier/distributor bidders to also submit the illegibility documents of his manufacturer, in addition to its own illegibility documents.

May we be honored to receive an early reply.

Thank you.

Very truly yours,



PETER GO CHENG
Sales Manager



NATIONAL FOOD AUTHORITY
Central Luzon Regional Office
Cabanatuan City

INVITATION TO APPLY FOR ELIGIBILITY AND TO BID

Supply and Delivery of Empty Sacks (MTS)- Palay Containers
Project Reference No: 2008-RBAC-R3-0011

The National Food Authority (NFA), Central Luzon Regional Office, Cabanatuan City, through its Corporate Operating Fund for CY 2009 intends to apply the sum of Twenty Two Million Seven Hundred Twenty Eight Thousand Pesos (P22,728,000.00) being the Approved Budget for the Contract (ABC) to payments under the contract for the supply and delivery of 1,664,000 pieces of Empty Sacks (MTS)- palay containers with the following specifications:

Parameter	Palay
1. Type	Tubular Type Woven Polypropylene
2. Code	PPR E50
3. Color	White
4. Size(mm) - Length - Width	1,150 500
5. Weight (g)	95
6. Bursting Strength (kPa)	1,510
7. Breaking Load (N) - Warp - Filling	344 295
8. Thread Count, min. - Warp - Filling	10 10
9. Seaming - Turned Edges (mm) - Stitching - Depth from the bottom edge(mm) - No. Of stitches/decimeter	25 10 12
10. Open Top End	Heat Cut
11. Roughness/Cohesiveness	Should be provided with twisted yarns

NFA, NFA Logo, MTS Code, Net 50 kg., MTS weight and date manufactured shall be based on designs to be provided.

Pursuant to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President, the aforesaid supply of sacks may be made of imported raw materials or locally produced polypropylene resin and gives preference to the use of Filipino labor, procurement of materials and supplies, production made and manufactured in the Philippines.

The bidding is open to all interested plastic manufacturers and/or suppliers for the supply and delivery of empty sacks. The prospective bidder shall inspect purchase bid documents from RBAC Secretariat, National Food Authority, CLRO, Maharlika Highway, Cabanatuan City upon payment of a non refundable fee of P5,000.00 and submission of the following:

- Sworn statement attesting that the prospective bidder has been in the business for the last three (3) years from 2006 without change of legal personality with experience in manufacturing, supply and delivery of empty sacks (MTS)-rice container within the same period.
- Xerox Copy of DTT business name registration, CDA Registration and/or SEC Registration certificate, whichever may be appropriate.

Eligibility criteria include, among others that the value of the prospective bidder's largest single contract, adjusted to current prices using the wholesale consumer price index, completed within the last three years and similar to the contract to be bid, must be at least fifty percent (50%) of the Approved budget for the Contract to be bid.

Or, in lieu of the above, prospective bidder should have completed at least three similar contracts and the aggregate contract amount should be equivalent to at least fifty percent (50%) of the ABC for the lots to be bid. Provided, that the largest of these similar contracts must be equivalent to at least twenty five percent (25%) of the ABC of the lots to be bid. Provided further that the business/company of the prospective bidder has been in existence for at least three (3) consecutive years prior to publication of this IAEB.

Bidding will be conducted through open competitive bidding procedure using non-discretionary pass / fail criteria as specified in the Implementing Rules and Regulations Part A (IRRA) of Republic Act 9184 (R.A. 9184), otherwise known as the "Government Procurement Reform Act," and is restricted to Filipino citizens/sole proprietorships, organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens, pursuant to Republic Act 5183 (R.A. 5183) and subject to Commonwealth Act 138 (C.A. 138).

All particulars relative to Eligibility Statement and Bidding - Bid Security, Performance Security, Pre-Bidding Conference, Evaluation of Bids, Post Qualification and Award of Contract shall be governed by the pertinent provisions of Republic Act (RA) 9184 and its Implementing Rules and Regulations (IRR).

The prospective bidders may submit Class "A" documents (Legal, Technical and Financial) from August 3-August 24, 2008 for eligibility checking and will be issued a certificate of eligibility by Regional Bids and Awards Committee (RBAC)-NFA Region III, Cabanatuan City. The certificate of eligibility issued by the RBAC may be submitted on or before bid opening on August 24, 2008, in lieu of Class "A" documents.

The bidding activities will be conducted at the NFA-CLRO, Cabanatuan City on the following schedule:

ACTIVITIES	SCHEDULE
1. Issuance of Bid Documents	August 3-10, 2008
2. Pre-Bidding Conference	August 11, 2008 (2:00PM)
3. Submission and Opening of Bids	August 24, 2008 (2:00PM)

For further information you may contact the RBAC Secretariat at Telephone Nos. (044)-800-2539/463-1168 or Fax No. 044-500-2893.

The National Food Authority, Region III reserves the right to accept or reject any or all Bids; to waive any defects or informalities found therein, to annul or cancel the bidding process at any time prior to contract award, impose additional terms and conditions and accept the proposal most advantageous to the government without thereby incurring any liability to the affected Bidder or Bidders whatsoever.

(Sgd.) ANOEL G. IMPERIAL, JR.
Asst. Regional Director
RBAC Chairman

(PI - Aug. 1, 2008)

	<p align="center">Financial Documents</p> <p align="center">1. Audited Financial Statements for the last two (2) years (CY 2007 & CY 2008), stamped "Received" by the BIR</p> <p align="center">a. Balance Sheet b. Income Statement c. Independent CPA's certification that he/she has examined/audited the Financial Statements</p> <p align="center">2. Income tax Return CY 2007 & CY 2008, stamped "Received" by BIR</p>
14.1.c	"Not required"
14.1.(d)	"No further instruction."
14.1.(e)	"Not required"
14.1.(j)	<p>LIST OF ADDITIONAL REQUIREMENTS:</p> <ol style="list-style-type: none"> 1. Sworn Statement of Bidder's Responsibility (<i>SF-Good-38</i>) 2. In case prospective bidder is a manufacturer, submit sworn statement in compliance to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President stating among others the following: <ol style="list-style-type: none"> A. Use of Filipino labor; B. Materials and supplies are produced, made and manufactured in the Philippines; C. Utilize virgin materials which are free from adulteration in the production of empty sack containers. 3. In case prospective bidder is a <u>SUPPLIER</u>, SUBMIT a Sworn statement <u>issued by the manufacturer</u> duly notarized in compliance to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President stating among others the following: <ol style="list-style-type: none"> A. Use of Filipino labor; B. Materials and supplies are produced, made and manufactured in the Philippines C. Utilize virgin materials which are free from adulteration in the production of empty sack containers <p>B. Certified Xerox copy of documents proof such as, Legal, Financial and Technical Documents establishing the capability of the manufacturer such as:</p> <ol style="list-style-type: none"> i. DTI or SEC Registration ii. BIR/VAT registration Certificate

ANNEX "B"

	<ul style="list-style-type: none"> iii. Updated BIR Clearance-BIR Collection Enforcement Division, QC iv. Updated GEPS Certificate of Registration v. Copy of completed contract at least fifty (50%) percent of the contract to bid vi. End User's Certificate of Acceptance <ul style="list-style-type: none"> i Xerox copy of the completed contract at least fifty (50%) percent of the contract to bid; vii. 2008 Audited Financial Documents showing the Net Financial Contracting Capacity of Manufacturer at least equal to the Approved Budget for the contract (ABC to bid. <p>4. Sworn statement of the prospective bidder certifying to the following information:</p> <ul style="list-style-type: none"> A. In case of a manufacturer- At least, fifty (50%) percent of raw materials (plastic resin) are immediately available for processing B. In case of supplier/distributor-At least, twenty five (50%) percent of raw materials (virgin plastic resin are immediately available with contracted supplier
15.1.(b)	No additional requirements
15.2.	The total ABC is Twenty Two Million Seven Hundred Twenty Eight Thousand Pesos Only (P22,728,000.00). Any bid with a financial proposal exceeding this amount shall not be accepted.
18.3.(a.3) and 18.3.(b.2)	No further instruction.
18.3.(b.1)	No further instruction.
18.4.	Bid Prices shall be fixed. Adjustable price proposals shall be treated as non-responsive and shall be rejected.
19.1. (b) and 19.2.	No further instructions.
20.1.(b)	Not applicable.
21.1.	Bids shall remain valid within 120 days from the date of the opening of bids.
22.1.	The Bid security shall in the following amount: 1. Cash, certified check, cashier's check, bank draft or irrevocable letter of credit at 1% of ABC 2. Bank Guarantee at 1.5% of ABC.



JODAAR COTTAGE INDUSTRIES

1576-1582 E. Remigio St., Sta. Cruz, Manila, Philippines TELEX NO. 40777 LORWELL PM
FACSIMILE: (632) 732-6349 * 741-6125 o PHONES: 711-7478; 732-6442; 742-7706; 741-6152

August 12, 2009

MR. ANGEL G. IMPERIAL, JR.
Asst. Regional Director and
RBAC Chairman
NATIONAL FOOD AUTHORITY
Central Luzon Regional Office
Cabanatuan City

Sir:

This will serve as a formal request for reconsideration on your decision to require bidders who are suppliers or distributors, to submit additional documents as contained under Item 14.1 (j) 3 of the Bid Data Sheet (BDS).

It is our understanding that this particular bidding is open to manufacturers, suppliers and distributors. Any of the aforementioned, therefore, is qualified to tender its bid under the category of a manufacturer, supplier or distributor. Under the aforementioned BDS, however, a bidder who is a supplier or distributor is still required to submit documents of the manufacturer. We find this matter as out of the ordinary and might not be in conformity with the provisions of R.A. 9184.

May we invite your attention to the fact that a distributor or supplier who is qualified to offer his bid, is the one who will be entering into a contract with the NFA, once awarded the contract, and the distributor's or supplier's manufacturer is not privy to the contract between the NFA and the winning bidder who is a supplier or distributor. In the event that a violation of the contract occurs, the winning bidder will be held accountable by the NFA and not the manufacturer, who is not even a signatory to the contract.

We take as example the requirement on largest single contract. Under the BDS, both the distributor/supplier and his manufacturer are required to submit a completed contract amounting to at least 50% of the Approved Budget for the Contract. Under the provisions of R.A. 9184, only the bidder is required to submit such requirement as part of the illegibility documents. Since the distributor/supplier is the bidder, the manufacturer should no longer be required to submit said requirement for the simple reason that he is not the bidder.

We are aware that the RBAC, in the exercise of its discretion, may require additional illegibility documents from a bidder, in order to protect the interest of the NFA. In this particular case, however, we believe that it has exceeded its discretion because it went beyond what is required under the law, particularly, R.A. 9184.

ANNEX "C"

The requirements contained under AO 227 should be applicable only to manufacturers who are prospective bidders for particular government procurement. Understandably, it gives preference to local producers. In the case of polypropylene sacks, it is common knowledge that resin is the main ingredient in the manufacture of said product. Resin, on the other hand, cannot be produced locally because it originates from oil by-products, which is not available in the Philippines.

Section 2 of said Administrative Order, limits the preference to only "manufactured articles, materials and supplies of the growth or production in the Philippines substantially from articles, materials and supplies of the growth, production or manufacture of the Philippines." Stated, otherwise, the preference appertains to processed or finished products manufacture out of raw materials grown or produced locally.

In our experience as a consistent MTS supplier of the NFA nationwide, we have seen enough safeguards under our contracts solely for the protection of the NFA. We have reservations, however, on your requirement for bidders to submit documents which are not provided by the procurement law, which might have been wrongly justified by an exercise of discretion on the part of the members of the RBAC.

Under the circumstances, we respectfully request the honorable members of the RBAC to reconsider its decision to require bidders who are suppliers/distributors, to submit additional illegibility documents which are not provided under the procurement law.

Very truly yours,


PETER GO CHENG
Sales Manager

FAXED

Aug 14 2009

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Snt OK H

Republic of the Philippines
NATIONAL FOOD AUTHORITY
Central Luzon Regional Office
Cabanatuan City
REGIONAL BIDS AND AWARDS COMMITTEE
Tel. No. : (044) 600-2539
Fax No. : (044) 600-2693
www.nfa.gov.ph
nfacro@yahoo.com

**MINUTES OF THE PRE-BID CONFERENCE FOR THE 2009 EMPTY SACKS
(MTS) - PALAY CONTAINERS REQUIREMENTS OF NFA-REGION III**
NFA CLRO Conference Room, Cabanatuan City
August 11, 2009; 2:00 PM

Present were:

Regional Bids and Awards Committee:

ANGEL G. IMPERIAL, Jr., ARD (Chairperson)
EDELINO A. ALEJANDRO, N. Ecija PM (Vice Chairman)
GEORGE R. ROCA, Aurora OIC (Member)
ADELAIDA C. NUESTRO, Bataan PM (Member)
SERAFIN M. MANALILI, Bulacan PM (Member)
MARIETTA J. ABLAZA, Tarlac PM (Member)

Technical Working Group:

GERRY J. AMBROSIO, Regional Operations Officer
ANNABELLE A. SOLIS, Regional Economist

Secretariat:

WILLIAM V. BALBIN, Regional Administrative Officer
CECILIA E. TAGUAM, Operations Officer II
CARMENCITA R. JOSON, Regional Licensing Officer
LILIA S. VALDEZ, GSD-OIC
JONATHAN D. YAZON, Regional Information Officer

Bidders:

YOLANDA AÑONUEVO, SENCAR
JULIAN JUANTONG, GOLDEN PORTAL
RIZA JEAN BANTILLO, FALCON YARN
FRED CHAN, POLY AGRO PRODUCTS CORP.
CHITO ABERGAS, POLY AGRO PRODUCTS CORP.
PETER GO CHENG, JODAAAR COTTAGE INDUSTRIES
PRUDENCIO QUIDO, Jr., JODAAAR COTTAGE INDUSTRIES

The pre-bid conference for NFA-Region 3's 2009 Empty Sacks (MTS) - Palay Containers, was presided by RBAC Chairperson Angel G. Imperial, Jr..

ANNEX "6"

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I. Business Matters:

- Chairperson Imperial announced that the RBAC sent invitation letters for third party observers to witness the pre-bid conference which were properly received by them. Incidentally, no one was in attendance.
- The Chairperson also explained that the subject matter of the bidding is for the award of a contract for the provision of **1,894,000 pieces of palay empty sacks** with an **Approved Budget for the Contract (ABC) of P22,728,000.00** to be delivered in the different provinces of NFA Region III. This, he announced, was disseminated thru national publication (PDI, August 1, 2009), posting in NFA offices nationwide and thru the internet via the NFA and PhilGEPS websites.
- As advised by the Chairperson, ROO Ambrosio presented the Terms of Reference (TOR) of the subject matter. He discussed in details the required specifications and parameters of the empty sacks needed by the NFA, the schedule of delivery in the provinces of Bulacan, Nueva Ecija, Pampanga and Tarlac and the payment procedure which shall be implemented, including the payment of the fee for ITDI testing.
- ROO Ambrosio also explained the checklist of the required documents which must be submitted by the bidders during the bidding conference on August 24, 2009 at exactly 2:00 PM.

2. Noted comment/reaction from RBAC representatives and bidders:

- All prospective bidders who were already declared eligible to bid by virtue of their valid participation in the recent public biddings for palay and rice empty sacks requirements of NFA-Region 3, must update all their previously submitted eligibility documents prior to being issued a certificate of eligibility. The certificate of eligibility, if any, stands in lieu of the legal, technical and financial documents in Envelope A or the envelope of eligibility requirements.

Bidders who will not be able to update their documents or who will not be able to secure the certificate of eligibility shall follow the same procedure on the submission of eligibility requirements following the non-discretionary "pass/fail" criteria.

- Mr. Peter Go Cheng of Jodaar questioned the need for suppliers and/or distributors, to submit the following documents under the Technical Proposal Item No. 10:
 - A. Sworn statement issued by the manufacturer duly notarized in compliance to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President stating among others the following:
 - i. Giving preference to the use of Filipino labor;
 - ii. Materials and supplies are produced, made and manufactured in the Philippines; and,
 - iii. Utilize virgin materials which are free from adulteration in the production of empty sack containers

B. Certified xerox copy of documents proof such as Legal, Financial, and Technical Documents establishing the capability of the manufacturer such as:

- i. DTI or SEC Registration Certificate
- ii. BIR/VAT Registration Certificate
- iii. Updated BIR Clearance
- iv. Updated Government Electronic Procurement System (G-EPS) Certificate of Registration
- v. Copy of the single largest completed contract at least fifty (50%) percent of the contract to be bid
- vi. End User's Certificate of Acceptance
- vii. 2008 Audited Financial Documents showing the Net Financial Contracting Capacity of Manufacturer at least equal to the Approved Budget for the Contract (ABC) to bid.


The RBAC explained that the documents in question are needed in order to establish a reputable link between the supplier and manufacturer so that the NFA will have an assurance that the delivery of the palay MTS will not be hampered when they are already needed by the NFA during the palay procurement operations.

The parties resolved further that in the absence of any legal impediments for the agency to specify/identify and require submission of documents for the Technical Proposal, the required documents shall stand as is.

- The payment of the fee for ITDI testing shall be paid by the bidder with the lowest calculated bid (LCB) and shall no longer be advanced by the NFA.
- The Provincial Manages gave assurance that the acceptance of the delivery of the empty sacks shall be given priority by the receiving warehouses, provided that the schedule is properly coordinated with the NFA offices.
- The bidders were advised that if the contract shall be awarded, the payment of which shall still be based on actual work performance and needs of the agency.
- The RBAC shall issue a notice relative to some minor corrections in the TOR and the checklist of requirements.

With no other remaining matters to be discussed, the pre-bid conference adjourned at 4:35 PM.

Prepared by:


WILLIAM V. BALBIN
Regional Administrative Officer
and Head of RBAC Secretariat

Noted by:


ANGEL G. IMPERIAL, JR.
Assistant Regional Manager II
and RBAC Chairman

**TERMS OF REFERENCE (TOR)
SUPPLY AND DELIVERY OF EMPTY SACKS (MTS)
PALAY CONTAINER**

I. RATIONALE

The General Terms and Conditions of Bidding for the Supply and Delivery of Empty Sacks (MTS)-Palay Container is hereby adopted by the NFA-CLRO Regional Bids and Awards Committee (RBAC) to achieve the following objectives:

1. To uphold transparency and accountability;
2. To achieve equity, effectiveness, efficiency and economy;
3. To award the Contract to the manufacturer/contractor whose bid/offer is most advantageous to the government;

II. SUBJECT MATTER, QUANTITY AND SPECIFICATIONS

The subject matter of the bidding is for the award of a contract for the Supply and Delivery of 1,894,000 pieces of Empty Sacks (MTS)-Palay Container in various warehouses to the different provinces of NFA, Region III shall be in accordance prescribed specifications as to type, material, performance and markings of woven polypropylene sacks in accordance with hereunder specifications prescribing the type, material, weight, color, size/dimension and markings of wooven polypropylene sacks;

NFA Standard Specifications for Palay and Rice Container (IDM '08-TSD-MD-08-03 dated August 12, 2008).

Parameter	Palay
1. Type	Tubular Type Wooven Polypropylene
2. Code	PPR E50
3. Color	White
4. Size(mm) - Length - Width	1,150 600
5. Weight (g)	95
6. Bursting Strength (kPa)	1,510
7. Breaking Load (N) - Warp - Filling	344 295
8. Thread Count, min. - Warp - Filling	10 10
9. Seaming - Turned Edges (mm) - Stitching - Depth from the bottom edge(mm) - No. Of stitches/decimeter	25 10 12
10. Open Top End	Heat Cut
11. Roughness/Cohesiveness	Should be provided with twisted yarns

NFA, NFA Logo, MTS Code, Net 50 kg., MTS weight and date manufactured shall be based on designs to be provided.

III. TERMS OF DELIVERY

1. The Contractor shall directly deliver MTS in various warehouses in the provinces of Bulacan, Nueva Ecija, Pampanga, and Tarlac.

2. Delivery of MTS shall be made in three tranches upon receipt of Notice to Proceed. The contractor shall be notified per tranche thru the issuance of Notice to Deliver from September to December, 2009, The delivery of empty sacks per tranche shall be made within fifteen (15) days upon receipt of Notice to Deliver in accordance with the following schedule :

LOT I-Palay

	Period of Delivery	Bulacan	Nebo	Pampanga	Tarlac	Total
1st Tranche	Sept/09	150,000	100,000	50,000	200,000	500,000
2nd Tranch	Oct/09	235,000	265,000	*112,700	222,000	834,700
3rd Tranch	Nov/09	245,500	**206,800		107,000	559,300
		630,500	571,800	162,700	529,000	1,894,000

*Including allocation of Batzan, 5,000 pieces and Zambales, 5,000 pieces.

**Including allocation of Aurora, 32,800 pieces.

3. Name of Receiving Provinces, Name of Warehouse Supervisor, Designated Receiving Warehouses, and the volume are as follows:

A. First Tranche

Province	Name of Warehouse	Location	Name of SG00/WSII	Volume
Bulacan	GID-Tikay	Tikay, Malolos		150,000
Nueva Ecija	GID-Cabanatuan	Cabanatuan City		100,000
Pampanga	GID-Sindalan	City of San Fernando		50,000
Tarlac	GID-Aguso	Aguso, Tarlac		200,000
			Total	500,000

B. Second Tranche

Province	Name of Warehouse	Location	Name of SG00/WSII	Volume
Bulacan	GID-Tikay	Tikay, Malolos		235,000
Nueva Ecija	GID-Cabanatuan	Cabanatuan City		265,000
Pampanga	GID-Sindalan	City of San Fernando		112,700
Tarlac	GID-Aguso	Aguso, Tarlac		222,000
			Total	834,700

C. Third Tranche

Province	Name of Warehouse	Location	Name of SG00/WSB	Volume
Bulacan	GID-Tikay	Tikay, Malolos		245,500
Nueva Ecija	GID-Cabanatuan	Cabanatuan City		206,800
Tarlac	GID-Aguso	Aguso, Tarlac		107,000
			Total	559,300

4. The Notice to Deliver will specify the date, volume, amount, and period of delivery.

A. GENERAL REQUIREMENTS

1. Type - The sack shall be tubular in shape, only the bottom end is closed by double chained stitches.
2. Materials
 - A. Material used for the manufacture of grain sacks shall be food grade 100% polypropylene.
 - B. To prevent slippage during stock piling, the fabric's weaving pattern (one way and other way) must have twisted yarns that will manifest roughness/cohesiveness.
 - C. The fabric must also accept or retain printing ink that will not rub or flake off to a degree where legibility is impaired.
 - D. The color of the fabric is white.

B. PERFORMANCE

1. Capacity - The container shall have a net capacity of 50 kg at 14% MC (Maximum).
2. Seaming - The seams shall be machine sewn in a manner which prevent the product from leaking through the seams during handling, storage and distribution.
 - The closure shall be double chain stitches on turned edges of at least 25 mm deep. The distance of the stitching shall not fall below 10 mm from the edge.
 - The thread shall be polypropylene tape suitably designed for the purpose.
 - All stitches shall be uniform loose stitches or knots.
3. Tip Edging - The mouth of the sack shall be heat cut.
4. Under no condition that deteriorated, soiled, uncleaned or contaminated bags be used.

C. MARKINGS

1. The sacks shall be clearly marked with information required by the buyer using suitable inks.

IV. APPROVED BUDGET FOR THE CONTRACT

The Approved Budget for the Contract (ABC) for palay container amounting to P22,728,000.00 inclusive of 12% VAT to be delivered at NFA Warehouses stated above (Item III)

TYPE	Qty/Pieces	Unit Price	ABC
Palay	1,894,000	P12.00	P22,728,000.00

V. WHO MAY PARTICIPATE IN THE BIDDING

Owners and Manufacturers with physical plant, equipment, machineries and manpower required and/or Suppliers with existing accreditation certificate from manufacturer in the production of the MTS to be bid may participate in the bidding and purchase of bid documents provided the following requirements are presented and submitted:

1. Sworn statement stating that the prospective bidder has been in the business for the last three (3) years from 2006 without change of legal personality with experience in **manufacturing, supply and delivery of empty sacks (MTS)-palay container** within the same period;
2. Xerox Copy of DTI business name registration, CDA Registration and/or SEC Registration certificate, whichever may be appropriate;
3. Payment of a non refundable fee as stated in the Invitation to Apply and Eligibility to Bid
4. Must be able to meet the eligibility criteria as provided in Instructions to Bidders (ITB) Clause 5.1

VI. ELIGIBILITY REQUIREMENTS

The prospective bidder must be able to satisfy the eligibility requirements in order to qualify for the bid as follows:

1. Must comply with the requirements stated in Instructions to Bidders (ITB) Clause 5.1.
2. Submission of Other Appropriate Licenses/Documents/Materials as follows:

A. RBAC Documents

1. Duly Accomplished Application for Eligibility and to Bid
2. Notarized Checklist of Bid Documents

B. Legal Documents

1. A). For Corporation
 - DTI Registration/SEC Registration
 - Articles of Incorporation
- B). For Partnership
 - DTI Registration
 - Names of Partners or owners with respective percentage of equity
- C). For Cooperative
 - DTI Registration
 - CDA Registration
- D). For Sole Proprietorship
 - DTI Registration
2. Notarized List of Names and Addresses of sister companies, mother companies and/or subsidiaries engaged in the same business, if any (Annex C). If none, submit a sworn statement to that effect;
3. One passport size photo with accompanying three (3) specimen signatures of the owner and/or authorized representative (Annex D);
4. Valid/Updated Real Property Tax Declaration on manufacturing plant in the name of the owner and/ or company.
 - I. Proof of Document as Manufacturer. The bidder may submit any copy of the following:
 - a. Original copy of Valid/Updated Real Property Tax Declaration of manufacturing plant and/or machinery in the name of owner/company.
 - b. Original copy of Transfer of Ownership Title of Manufacturing plant and machinery (Any Document of Sale Transaction or Deed of Sale).
 - c. Certified Photocopy of Financial Documents (Balance Sheet) showing manufacturing plant and machinery as Fixed Asset in the name of Owner/Company.
 - d. Original copy of document in case of Lease-Lease Agreement for manufacturing plant and machinery used in manufacturing.
 - II. Proof of Document as Supplier/Distributor not a manufacturer, but an authorized agent or distributor of the manufacturer. The bidder shall submit an accreditation certificate or authorization issued by Manufacturer

to supply polypropylene sacks with supporting certified photocopy of any document stated in Item I above.

5. 2009 Mayor's Permit and Official Receipt (OR);
6. Taxpayer's Identification Number (TIN Card);
7. BIR / VAT Registration Certificate;
8. Updated BIR Clearance - (BIR Collection Enforcement Division, Quezon City)
9. Updated Government Electronic Procurement System (G-EPS) Certificate of Registration;
10. Valid Joint Venture Agreement, in case of Joint Venture
11. Letter of Authority to validate submitted Documents ((*SF-Good-18*))
12. Certificate of Authenticity (*SF-Good-19*)
13. Statement of prospective bidder that it is not "blacklisted" or barred from bidding by the government or any of its agencies, offices, corporations or LGU'S (*SF-Good-11*)

C. Technical Documents

1. Sworn statement indicating that the applicant has been in the business for the last three (3) years from 2006 without change of legal personality with experience in **manufacturing, supply and delivery of empty sacks (MTS)-palay container** within the same period. **Xerox Copy/ies of the contract or other documents should be attached.**
2. Notarized Statement of all on-going government and private contracts, including contracts awarded but not yet started with the following information(*SF-Good-13a*):
 - a. Name of Contract
 - b. Date Awarded
 - c. Date Started
 - d. Date of Completion
 - e. Value of Outstanding Works
 - f. Bidder's Role (Specification if the prospective bidder is manufacturer, supplier of goods or services etc.)

Must be supported with the following Original documents:

- 2.1 Copy of Contract or Notice of Award indicating the value of the contract
- 2.2 Notice To Proceed
- 2.3 Certificate of Accomplishment

Or;

If contract with private company:

- A. *In lieu of the contract and notice to proceed, original copy of the purchase order/s or certified Xerox copy of purchase order/s with supporting sworn statement stating the reason why the original copy cannot be presented.*
- B. *In lieu of certificate of accomplishment of the contract;*
 1. *Original copy or Original duplicate copy of sales invoice, delivery receipt or official receipt; or,*
 2. *Certified statement of partial payment from contracting party*

3. Notarized Statement of all government and private contracts completed which are similar in nature to the project to be bid within the last three (3) years, adjusted to current prices using consumer's price index with the following information (*SF-GOOD-13b*):
 - a. Name of Contract
 - b. Date Awarded
 - c. Effectivity of the Contract
 - d. Duration of the Contract
 - e. Date Completed
 - f. Amount Awarded

- g. Amount completed
- h. Bidder's Role (Specification if the prospective bidder is manufacturer, supplier of goods or services etc.)

Must be supported with the following Original documents:

3.1 Copy of Contract or Notice of Award indicating the value of the contract

3.2 Certificate of Completion

Or;

If contract with private company:

A. In lieu of the contract, original copy of the purchase order/s or certified Xerox copy of purchase order/s with supporting sworn statement stating the reason why the original copy cannot be presented.

- 4. Original Copy/ies of end-user's Certificate of Acceptance letter/s for completed contracts in Item C.3 above.
- 5. Sworn Statement of bidder's single largest contract as principal contractor, adjusted to current prices using the wholesale consumer price index, completed within the last three (3) years and similar to the contract to be bid, which should be at least fifty (50%) percent of the approved budget of the contract to bid.

Or, in lieu of the above, prospective bidder should have completed at least three similar contracts and the aggregate contract amounts should be equivalent to at least fifty percent (50%) of the ABC for the project to be bid. Provided, that the largest of these similar contracts must be equivalent to at least twenty five percent (25%) of the ABC of the project to be bid. Provided further that the business/company of the prospective bidder has been in existence for at least three (3) consecutive years prior to publication of this IAEB.

The sworn statement of the bidder's single largest contract must be supported with the following documents:

-If contract with NFA and other government agencies

A. Certified photocopy of contract

B. Certified photocopy of certificate of completion

-If contract with private companies, the following proof of payments

A. Certified photocopy of contract/purchase order/MOA

B. Proof of payments which must be at least equal to the amount per sworn statement of bidder's single largest contract

- 1. Official receipt and Statement of billing/Charged Invoice**
- 2. Voucher and Check**

D. Financial Documents

- 1. Audited Financial Statements for the years 2007 and 2008, stamped "Received" by BIR.
 - 1.1 Balance Sheet
 - 1.2 Income Statement
 - 1.3 Independent CPA's certification that he/she has examined/audited the Financial Statements.
- 2. Income tax return CY 2007 & CY 2008, Stamped "Received" By BIR
- 3. Prospective bidder's computation for its Net Financial Contracting Capacity (NFCC), (SF-Good-14), or a commitment from a licensed bank to extend to it a credit if awarded the contract to be bid (SF-Good-15) or; a cash deposit certificate (SF-Good-16) in an amount not lower than the set by the procuring

entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to bid.

Note: All submitted bid documents and bid proposals shall become exclusive property(ies) of the NFA except for the original copy which shall be returned after proper authentication upon request and the bid bond(s) as provided therein.

VII. BID DOCUMENTS

A. Technical Proposal

1. The Bid Security as to form, amount and validity period.

Form Security	Minimum Amount in % of Approved Budget for the Contract (ABC) to be Bid
Cash, Certified Check, Cashier's Check, Manager's Check, Bank Draft or Irrevocable Letter of Credit	One percent (1%) of ABC
Bank Guarantee	One and a half percent (1½%) of ABC
GSIS Surety Bond	Two and a half percent (2½%) of ABC

In case of GSIS Surety Bond, the Bids and Bids Securities shall be valid for 120 days and shall bear the phrase "CALLABLE ON DEMAND".

2. Authority of the signing official

Special Power of Attorney (SF-Good-35)

Secretary's Certificate (SF-Good-36)

3. Delivery Schedule

4. Sworn statement of compliance on technical specifications (Annex G)

5. Commitment from a licensed bank to extend to the bidder a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to 10 percent (10%) of the approved budget for the contract to be bid. Provided, however, that if the bidder previously submitted this document as an eligibility requirement, the said previously submitted document shall suffice.

6. Sworn Affidavit of Disclosure (SF-Good-12)

7. Certification under oath of bidder's compliance to existing labor laws and standards (SF-Good-37)

8. Sworn Statement of Bidder's Responsibility (SF-Good-38)

9. In case prospective bidder is a manufacturer, submit sworn statement in compliance to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President stating among others the following:

- a. Giving preference to the use of Filipino labor;
- b. Materials and supplies are produced, made and manufactured in the Philippines; and,
- c. Utilize virgin materials which are free from adulteration in the production of empty sack containers

10. In case prospective bidder is a Supplier and/or Distributor, submit the following:

- A. Sworn statement issued by the manufacturer duly notarized in compliance to Administrative Order No. 227, dated May 27, 2008, issued by the Office of the President stating among others the following:

- i. Giving preference to the use of Filipino labor;
- ii. Materials and supplies are produced, made and manufactured in the Philippines; and,
- iii. Utilize virgin materials which are free from adulteration in the production of empty sack containers

B. Certified xerox copy of documents proof such as Legal, Financial, and Technical Documents establishing the capability of the manufacturer such as:

- i. DTI or SEC Registration Certificate
- ii. BIR/VAT Registration Certificate
- iii. Updated BIR Clearance -
(BIR Collection Enforcement Division, Quezon city)
- iv. Updated Government Electronic Procurement System (G-EPS) Certificate of Registration
- v. Copy of the single completed contract at least fifty (50%) percent of the contract to be bid
- vi. End User's Certificate of Acceptance
- vii. 2008 Audited Financial Documents showing the Net Financial Contracting Capacity of Manufacturer at least equal to the Approved Budget for the Contract (ABC) to bid.

11. Sworn statement of the prospective bidder certifying to the following information:

- A. In case of a manufacturer- At least, fifty (50%) percent of raw materials (plastic resin) are immediately available for processing.
- b. In case of supplier/distributor-At least, fifty (50%) percent of raw materials (virgin plastic resin) are immediately available with contracted manufacturer.

B. Financial Proposal

- 1. Duly Accomplish Bid Form/Bid Proposal
- 2. Five (5) pieces of samples in compliance with technical specifications

VIII. PAYMENT PROCEDURE

Payment for the sacks shall be made at the NFA-Central Luzon Regional Office, Cabanatuan City by means of check and shall be effected as follows :

- A. Fifty percent (50%) of the value of the quantity delivered, shall be paid after delivery and presentation of the original copies of the following documents :
 - a. MTS Test for Size, Weight, Count, and Seaming from the NFA Inspection team;
 - b. Delivery Receipt/s and Sales Invoice
 - c. Empty Sack Receipt/s (ESR)
-In case of Direct Delivery to NFA Provincial Office
 - d. Certificate of Sampling
 - e. Accomplished Voucher
 - f. Statement of Billing
 - g. Notice of Award (Xerox)
 - h. Notice to Proceed (Xerox)
 - i. Notice to Deliver (Original)

- j. Contract (Xerox)
- k. Inspection and Acceptance Report (NFA Provincial Office)

- B. The remaining 50% shall be paid upon presentation of the following :
- a. ITDI Test result on bursting strength, tensile strength and mesh count to show that the sacks delivered are in accordance with the specifications
 - b. Summary Report and other supporting documents
 - c. Certificate of Acceptance for each delivery issued by the NFA

All payments shall be subject to the usual auditing and accounting rules of the NFA and COA.

IX. TESTING PROCEDURE

Upon receipt of the sacks at the NFA designated warehouse/s in the provinces of Bulacan, Nueva Ecija, Pampanga, and Tarlac, the Regional Inspectorate Team Committee shall conduct physical testing as to measurement, weight and quantity of sacks delivered. The physical testing shall be conducted in the presence of the CONTRACTOR or his authorized representative. Thereafter, the NFA Inspection Team shall take random samples of the sacks and submit the same for testing in ITDI Metro Manila or its local offices.

In the event that the results of any of the testings show that the sacks delivered are not in accordance with the specifications, the committee shall notify the CONTRACTOR of its rejection of the sacks delivered.

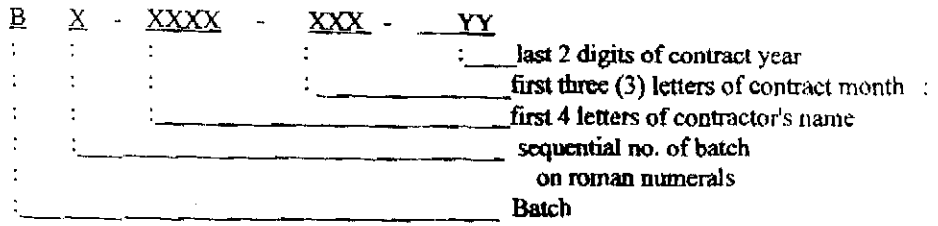
CONTRACTOR, shall, therefore, within five (5) days from the date of receipt of notice of rejection, replace the sacks with those that conform with the specifications.

However, if NFA decides to use the sacks which do not conform with the specifications, the CONTRACTOR shall be notified thereof and payment shall be subjected to corresponding penalty. The computation of penalty shall be in accordance with the existing SOP and/or memoranda on Empty Sack Procurement.

No rejected sacks, however, shall be withdrawn from any NFA warehouse until their replacements have been delivered and accepted by NFA.

A. Notice of Delivery of MTS by Sack Manufacturer to NFA

1. NFA-CLRO, Cabanatuan City shall be informed by the sack manufacturer of the date of delivery at least three (3) working days prior to actual delivery. No delivery of sacks shall be undertaken without an approved contract, notice of award, notice to proceed, and notice to deliver;
2. The purchased MTS shall be delivered by the manufacturer to the NFA designated delivery points or in the Regional/Provincial Office in bales: five hundred (500) pieces per bale for plastic and in batches or truckloads.
3. All MTS for delivery to NFA shall be pre-weighed at the manufacturer's plant on a per bale basis. Each bale shall be pre-numbered and the corresponding weight per bale shall be properly indicated on the bale wrapping (i.e. height of the number/markings should be about 10 centimeters and black pentel pen shall be used).
4. Every delivery shall be covered by one (1) invoice and one (1) or more Delivery Receipts (DR). The sack manufacturer shall prepare one DR per sack type per truckload. For easy reference, deliveries shall be marked in batches, using the following batch code structure:



Illustrative Example:

First batch of delivery corresponding to the first DR and Invoice from Contractor LOPEZ.
 Date of Contract is December 10, 1993.
 Batch Code : BI-LOPE-DEC93

The batch code shall be used in referring to the particular delivery in all communications between central office and concerned field office.

B. Delays in the Suppliers Performance

Should Contractor encounter conditions that will cause delay in the prompt delivery of MTS, Contractor shall follow and comply with the provisions of GCC Clauses 16.1 and 16.2.

C. Inspection, Testing and Evaluation of MTS Purchased and Delivered
1. Physical Tests to be Conducted by NFA

Physical testing as to weight count and measurement of the MTS delivered to NFA shall be conducted by Regional Inspection Team Committee.

The inspection team shall determine the conformity of the MTS to specifications. In the absence of any member, an alternate member should be designated upon recommendation of the RBAC Chairman and for approval of the Head of Procuring Entity (HOPE). In no case shall testing be conducted in the absence of any member/alternate member. Physical test shall be conducted in the presence of the MTS contractor or his authorized representative.

A. Test Weighing

1. Upon delivery of the MTS to the NFA designated receiving warehouse, fifty percent (50%) of the number of bales delivered shall be subjected to test weighing to determine the average weight per bale/per piece.
2. Selection of bales to be subjected to test weighing shall be done at random. All sample bales shall be labelled/coded with corresponding invoice number, code, name of manufacturer/supplier, date of delivery, and bale number.
3. If any single sample bale falls below the standard weight specifications, one hundred percent (100%) weighing shall automatically be adopted.
4. All bales falling below the standard weight specification shall be segregated and rejected outright. The RBAC shall notify in writing within three (3) calendar days the supplier/contractor about rejection and supplier shall deliver replacement within five (5) calendar days upon receipt of notice.

B. Test Counting

1. Ten percent (10%) of the test-weighted bales delivered shall be test-counted to determine the average number of pieces per bale. As in test-weighting, selection of bales to be test-counted shall be done at random.
2. The inspection team shall ensure that samples being test-counted are firm and uniform all throughout. MTS found with soft thin fiber or other unusual features shall be segregated. Acceptance of segregated MTS shall be subjected to a separate ITDI test. In the event of failure, the sacks shall either be accepted subject to penalty or outrightly rejected by the Regional Director upon recommendation of the Inspection Team depending on the need of the Agency.
3. Sacks with factory defects (i.e. thread runs, busted or torn sacks) shall be rejected and deducted from the number of pieces per bale.
4. Checking of prints shall be undertaken while the MTS deliveries are subjected to test counts. The number of unprinted/misprinted/blotted sacks in the test-counted bales shall be considered as the average deficiency for the whole delivery for purposes of computing any penalty/price reduction.
5. If the number of sacks in the test-counted bales is less than the standard number of sacks per bale, additional MTS shall be required from the contractor/s to cover up the variance. However, this shall not in any way affect the amount of penalty to be imposed.

C. Tests as to Size/Measurement

1. From the test-counted bales, two (2) pieces shall be taken at random from every bale to serve as samples for determining the average size per piece. Samples shall be labelled/marked corresponding to the code of the bale from which it was taken.
2. To test the size/measurement, MTS samples shall be measured in length at mid-portion from the bottom sewings. The width shall be measured from the mid-portion of the sewings.
3. If, after inspection, the average size of the MTS samples is found to be below the tolerable size specification, the sacks delivered shall either be accepted by NFA but with corresponding penalty on the contractor or be rejected outright, depending upon the agreement with the contractor. Rejections due to deficiency in size shall be based on the conditions and limitations specified in Annex D.

D. Test for Seaming Measurements

1. The same samples taken for size measurement shall serve as samples for determining the average seaming measurements.
2. If test for seaming measurements are found below the tolerable seaming specifications, the sacks delivered shall either be accepted by NFA but with corresponding penalty on the contractor, or outrightly rejected depending upon the agreement with the contractor.
3. Seams shall be measured from the bottom. A 25 mm fold for turned edges is required. The stitch must be sewn 10 mm from the bottom.
4. The thread to be used must be rayon wire cord or polypropylene tape suitably designed for the purpose.

E. Preparation of Reports on MTS test for Size, Weight, Count and Seaming and Documentation of Acceptable MTS Deliveries

1. Results on test weighing, test counts and test measurements shall be recorded by the member of the Inspection Team in the Report on MTS test for Size, Weight, Count and Seaming (Exhibit 1). Said report shall likewise include the following information: MTS type/capacity, contractor's name, delivery date, truck number, number of bales, date of testing, Invoice Number and DR Number.

2. A Certificate of Sampling (Exhibit 1A) shall be prepared by the head of the Inspection Team to be signed by the team members, contractor's representative, and noted by the Provincial/Regional Director.

3. Only MTS deliveries which conform to the MTS standard specs in terms of size, weight count and seaming shall be covered by the Inspection and Acceptance Report (IAR), with "Purchase" as nature of transaction, but said MTS deliveries shall still be subjected to further testing by ITDI.

4. The rejected MTS shall remain in the NFA warehouse for safekeeping until their replacements have been received by NFA, but no IAR shall be issued for the rejected MTS. The contractor's Invoice and Delivery Receipt signed/stamped "RECEIVED" by NFA and the IAR for the acceptance of MTS shall serve as reference in determining the exact quantity and specs of the rejected MTS being held in the NFA warehouse.

4.1 Indelible markings and/or paint shall be made by the Inspection Team on the MTS edges to prevent their "redelivery" to NFA.

2. Tests to be Conducted by ITDI

A. Tests for bursting strength, tensile strength, and mesh count of the MTS deliveries shall be conducted by the Industrial Technology and Development Institute (ITDI) in Metro Manila and/or the ITDI local/branch. The ITDI tests shall be conducted only for MTS deliveries which conform to the standard specifications as to size, weight count and seaming.

B. The number of pieces to be subjected to ITDI tests shall be a minimum of six (6) pieces for every truckload or one (1) piece for every 20,000 pieces whichever is higher. Selection of samples shall be done at random. The samples for testing shall be properly labelled as shown in Exhibit 2, and submitted to ITDI by the Inspection Team.

C. The ITDI testing fee shall be borne by the contractor.

D. The ITDI test results (Exhibit 3) on the original samples submitted shall be considered as official and shall be the bases for the final acceptance/rejection of the MTS deliveries. Only one (1) request from the contractor for retesting shall be entertained by NFA. However, NFA reserves the right to subject the delivery samples for retesting for its own internal purposes.

3. Evaluation of Test Results

A. The ITDI test results shall be secured by the Inspection Team copy furnished COA representative and supplier.

B. The results of the tests as to size, weight, count and seaming and the ITDI test results as to bursting strength, tensile strength and mesh count shall be evaluated by the Regional Inspection Committee headed by the Regional Engineer and the Regional SQAQ as Vice-Chairman based on the existing MTS standard specifications. Its findings and recommendations shall be indicated in the Summary Report (Exhibit 4) which shall be submitted to the RBAC Chairman copy furnish the HOPE.

B.1 NOTICE OF PENALTY CHARGES

In case the test results show deviation/s from the standard specs but within the tolerable limit, final acceptance of the MTS delivery shall be recommended. However, the corresponding penalty to be applied on the payment to contractor shall be computed jointly by the Inspection Committee and Technical Working Group-RBAC using the method specified in Annex D. A notice of Penalty Charges (Exhibit 5a) shall be issued to the contractor signed by the HOPE. The detailed computation of the penalties shall be attached. The penalty or liquidated damages shall be deducted from the voucher claim of the supplier.

B.2 NOTICE OF REJECTION

If the deviation/s exceed/s the tolerable limit, the MTS delivery shall be recommended for rejection. A Notice of Rejection (Exhibit 5b) shall be issued to the contractor signed by the RD or Committee on Bids and Awards.

C. A Certificate of Acceptance (Exhibit 6) shall be issued by the R. O. after all specifications have been evaluated per Summary Report.

D. Rejected MTS delivery/ies shall be replaced by the contractor within fifteen (15) calendar days from the receipt of the Notice of Rejection from NFA. However, no rejected MTS shall be pulled out from the NFA warehouse until acceptable replacement have been received by NFA.

X. FINAL ACCEPTANCE

A Certificate of Acceptance for the delivery shall be issued by the NFA if the sacks are in accordance with the specifications.

XI. PENALTY

In the event that any delivery shall not conform to the required specifications based on the following:

- a. Report on MTS Test for Size, Weight, Count and Seaming
- b. ITDI Test for Bursting, Tensile Strength and Mesh Count
- c. Summary Report,

NFA may reject the sacks or may exercise the option to accept the sacks and apply the corresponding penalty in accordance with the existing SOP and/or memoranda on Empty Sack Procurement.

In case contractor fails to deliver the specified quantities of the MTS on the dates stated in Section III (Terms of Delivery) or delivers only partially, or fails to replace the rejected sacks within the time specified, contractor agrees to pay a penalty of 1/10th of the cost of the undelivered quantity per day of delay, the amount of which shall be deducted from any amount due to contractor.

Furthermore, in addition to the penalties specified in the two preceding paragraphs, NFA shall have the right to automatically cancel this contract and/or forfeit the Performance Bond without prejudice to other legal actions that may be warranted.

XII. Warranty

1. The contractor warrants that the empty sacks supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials except when the design and/or material required by the NFA Region III provides otherwise.
2. The contractor further warrants that all empty sacks supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the contractor, that may develop under normal use of the supplied empty sacks.
3. In order to assure that manufacturing defects shall be corrected by the contractor, a warranty shall be required from the contractor for a minimum period of three (3) months after performance of the contract.
4. The obligation for the warranty shall be covered by, at the contractor's option, either retention money in an amount equivalent to at least ten percent (10%) upon payment, or a special bank guarantee equivalent to at least ten percent (10%) of the total



TECHNICAL SUPPORT OFFICE

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

08 October 2009

PETER GO CHENG

Sales Manager

JODAR COTTAGE INDUSTRIES

1576 – 1582 E. Remigio St., Sta. Cruz,
Manila, Philippines

Dear Mr. Cheng:

We respond to your letter dated 17th of August 2009 requesting for clarification in relation to the propriety on the part of the Regional Bids and Awards Committee (RBAC) of the National Food Authority (NFA) – Region III, Cabanatuan City in impliedly limiting to manufacturers only, the prospective bidders for the supply and delivery of polypropylene sacks for palay.

Based on your letter, an invitation to bidders was published on the 1st of August 2009 at the Philippine Daily Inquirer, specifically states that the bidding is open to manufacturers, suppliers and distributors, some additional eligibility requirements under the Bid Data Sheet (BDS), impliedly prohibits the participation of suppliers and distributors in the said bidding.

And this matter has been raised by you during the pre-bid conference considering the uniqueness of the supplies to be procured. That you have emphasized that “Resin”, which is an oil by-product, is the main ingredient in the manufacture of polypropylene sacks. “Resin”, however, is not locally available because the Philippines is not an oil producing nation. That provision of AO 227, therefore, should not be applied by the procuring entity.

GPPB and its TSO only renders 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 functions under the law. Thus, it cannot dictate to the BAC how to conduct its bidding and the related activities pertinent thereto.

The functions of the BAC cannot be interfered with by any government agency since these solely fall within their authority as sanctioned by the 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.

On the other hand, for your guidance,

Since the Invitation to Bid was advertised on the 1st of August 2009 the Implementing Rules and Regulation Part A (IRR-A) of the Republic Act No. 9184 (R.A. 9184) shall govern.

As clearly defined in Section 5 of the Implementing Rules and Regulations Part A (IRR-A) of Republic Act No. 9184 (R.A. 9184), bidding documents refer to the documents issued by the procuring entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods, and/or consulting services required by the procuring entity.

Evidently, the bidding documents issued by the procuring entity contain all the specific requirements, limitations and parameters of the procurement at hand, as determined by the procuring entity. Hence, it is the procuring entity that has the discretion in determining what to include in the bidding documents, provided that for bidding purposes, all the minimum requirements of the law as contained in Section 25 of the IRR-A of R.A. 9184 are met and that submission of additional documentary requirements from the bidders must be in accordance with law.

This being the case, it may be inferred that the law does not prohibit procuring entities from customizing their bidding documents in accordance with their specific requirements by requiring the submission of additional documentary requirements under the caveat it must be reasonable and not contrary to any provision of the law.

Furthermore, Section 17.3 of the IRR-A of R.A. 9184 allows the procuring agency to require additional document requirements or specifications such as summary of data, facilities and/or services where applicable and necessary to complete the information required for the bidders to prepare and submit their bids. The procuring entity may also require other appropriate licenses to be submitted as eligibility requirements whenever necessary and applicable taking into account the size, cost and type of project being bid out (Sections 23.6.1 and 24.7.1, IRR-A).

On the question that the requirements provided for in the invitation to bid that is grounded on AO 227 is in violation of RA 9184.

Under Section 43 of RA 9184 Consistent with the country's obligations under international treaties or agreements, Goods may be obtained from domestic or foreign sources and the procurement thereof shall be open to all eligible suppliers, manufacturers and distributors. However, in the interest of availability, efficiency and timely delivery of Goods, the Procuring Entity may give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired quality.

Both law give preference to the purchase of domestically-produced and manufactured goods, supplies and materials that meet the specified or desired

quality. In accordance with provisions of Administrative Order No. 227. There are no inconsistencies between RA 9184 and Administrative Order No. 227.

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