



Bases Conversion and Development Authority

15 April 2013

MR. RODOLFO C. MANALIGOD

President

DBP Service Corporation

2/F Executive Building Center

Sen. Gi; Puyat corner Makati Avenue

1200 Makati City

Dear **Mr. Manaligod**:

This refers to your letter dated 01 April 2013 requesting information from this Office for the reasons of the BCDA Board of Directors, acting as the Head of the Procuring Entity (HOPE), in not awarding the Contract for Manpower Services for CY 2013-2016 and directing that a rebidding be conducted instead.

The basis of the HOPE in not awarding the contract is Section 41(c)(ii) of the Implementing Rules and Regulations of Republic Act No. 9184 which states as follows:

“Section 41. Reservation Clause

The Head of the Procuring Entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

- a) If there is prima facie evidence of collusion between appropriate public officers or employees of the procuring entity, or between the BAC and any of the bidders, or if the collusion is between or among the bidders themselves, or between a bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
- b) If the BAC is found to have failed in following the prescribed bidding procedures; or
- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP, as follows: (i) if the physical and economic conditions have significantly changed as to render the project no longer economically, financially, or technically feasible, as determined by the Head of the Procuring Entity; (ii) if the project is no longer necessary as determined by the Head of the

Procuring Entity; and (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity."
(*Emphasis supplied*)

The decision of the HOPE in not awarding the contract at this time finds support in Section 41(c)(ii) of the IRR.

The present Terms of Reference (TOR) for the Manpower Services for CY 2013-2016 included positions such as the canteen personnel which were considered by the Board as not necessary in the operations of the BCDA. They have recommended removing from the list all canteen personnel positions. Thus, the HOPE determined that a part of the project is no longer necessary.

Also, there is an ongoing BCDA reorganization which will rationalize and streamline BCDA's functions and operations which is expected to be implemented early next year. This reorganization will review BCDA's current practice of outsourcing its manpower requirements including those providing general support services.

By not awarding the contract, the HOPE appropriately exercised its sound discretion after having determined that the award will not redound to the benefit of the BCDA.

There is no doubt that by participating in the public bidding, DBPSC has submitted itself to the conditions laid down by the BCDA, among which, is the reservation of its right to reject any and all bids to be made therein. The wisdom of this saving clause cannot be questioned. Under a statute requiring contracts to be awarded to the lowest bidder, the authorities charged with the duty to make such award, acting in good faith, may refrain to make the award if they deem it best for the entity to do so.¹ The discretion given to the authorities on this matter is of such wide latitude that the courts will not interfere therewith.²

Accordingly, the HOPE directed the Bids and Awards Committee (BAC) to rebid the contract under a revised TOR.

We hope we have clarified the matter.

Very truly yours,


ARNEL PACIANO D. CASANOVA
President & CEO

¹ Jalandoni vs. NARRA, 108 Phil. 486 (1960)

² NAPOCOR, et al. vs. Court of Appeals, et al., GR Nos. 113103 and 116000, June 13, 1997